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ABSTRACT

This report summarizes a 1983 study, following previous research by the United States Commission on Civil Rights. The study examined several aspects of civil rights programs within federal agencies in Iowa, Kansas, Missouri, and Nebraska: distribution of authority and resources, accomplishments in 1980, and plans for 1983. Information was obtained from regional officials or, for agencies that had no regional civil rights units, from their national civil rights units. Thirteen descriptive sections cover the Environmental Protection Agency; the Department of Education; the Federal Deposit Insurance Corporation; the Federal Home Loan Bank Board; the Federal Bureau of Investigation; the Departments of Health and Human Services, Housing and Urban Development, Labor, and Transportation; the Small Business Administration; the Department of Energy; the Office of Revenue Sharing; and the Federal Executive Board. The report concludes that, although enforcement has not greatly decayed since 1980, it is very poor in most of these agencies. Specific findings are listed with recommendations to review regional compliance efforts nationwide, to strengthen civil rights programs in individual agencies, and to review the efforts of several agencies that supplied no information for this study. (MCG)

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Federal Civil Rights Enforcement Efforts in Mid-America

September 1983

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EA 016 731

A report of the Iowa, Kansas, Missouri and Nebraska Advisory Committees to the United States Commission on Civil Rights. The information and consideration of the Commission. This report will be considered by the Commission before it is made public, its reaction. In the meantime, the findings and recommendations of this report should not be attributed to the Commission or the Iowa, Kansas, Missouri and Nebraska Advisory Committees.

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights, created by the Civil Rights Act of 1957, is an independent, bipartisan agency of the executive branch of the Federal Government. By the terms of the act, as amended, the Commission is charged with the following duties pertaining to discrimination or denials of the equal protection of the laws based on race, color, religion, sex, age, handicap, or national origin, or in the administration of justice: investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to discrimination or denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection of the law; maintenance of a national clearinghouse for information respecting discrimination or denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

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An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 as amended. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

Federal Civil Rights Enforcement Efforts in Mid-America

September 1983

—A report prepared by the Iowa, Kansas, Missouri and Nebraska Advisory Committees to the United States Commission on Civil Rights

Attribution:

The conclusions in this report are those of the Iowa, Kansas, Missouri and Nebraska Advisory Committees to the United States Commission on Civil Rights and, as such, are not attributable to the Commission. This report has been prepared by the State Advisory Committees for submission to the Commission and will be considered by the Commission in its program planning and in formulating its recommendations to the President and the Congress.

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Prior to the publication of a report, the State Advisory Committees afford to all individuals or organizations that may be defamed, degraded, or incriminated by any material contained in the report an opportunity to respond in writing to such material. All responses have been incorporated, appended, or otherwise reflected in the publication.

LETTER OF TRANSMITTAL

Iowa, Kansas, Missouri and Nebraska
Advisory Committees to the
U.S. Commission on Civil Rights
September 1983

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John Hope III, *Acting Staff Director*

Dear Commissioners:

The Iowa, Kansas, Missouri and Nebraska Advisory Committees submit this report on their study of the Federal civil rights enforcement efforts in their states. This is a follow-up to the thirteen Advisory Committees' 1981 study of Federal efforts to ensure equal opportunity and a similar study on Federal affirmative action efforts we transmitted to you in April 1983. Data for this report on compliance efforts was obtained from the regional representatives of the Environmental Protection Agency, Department of Education, Department of Health and Human Services, Department of Housing and Urban Development, Department of Transportation and Federal Executive Board in Kansas City and from the national offices of the Federal Deposit Insurance Corporation, Federal Bureau of Investigation, Federal Home Loan Bank Board, Office of Revenue Sharing and Small Business Administration. Some national agencies did not respond to our requests for data or failed to provide data.

The Advisory Committees conclude that there are significant deficiencies in the Federal civil rights enforcement efforts of the agencies they reviewed. Most significant is the inability of many agencies to monitor a reasonable proportion of those governments, agencies and individuals who receive Federal funds or benefit from Federal loans and who have given assurances of compliance with the various Federal antidiscrimination laws. The Advisory Committees note that many of the inadequacies noted in past Commission on Civil Rights reports remain. The Committees urge the Commission to undertake a new national study of civil rights enforcement, focusing on regional efforts, to determine whether the problems identified in Iowa, Kansas, Missouri and Nebraska are salient in other regions.

The Advisory Committees note that many agencies are unable to review their grantees and subgrantees within a five year period to ensure compliance with assurances of nondiscrimination that were the condition of grants or loans. They

urge the Commission to send letters to the Environmental Protection Agency, the Departments of Education, Health and Human Services, and Labor, the Small Business Administration, the Federal Aviation Administration and the Federal Highway Administration urging them to increase the resources available to their civil rights units.

We urge you to concur with our recommendations and assist the Committees in their follow-up activities.

Respectfully,

GREGORY H. WILLIAMS, *Chairperson*
Iowa Advisory Committee

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CONTENTS

1. Introduction 1
2. Environmental Protection Agency 3
3. Department of Education 8
4. Federal Deposit Insurance Corporation 11
5. Federal Home Loan Bank Board 14
6. Federal Bureau of Investigation 17
7. Department of Health and Human Services 19
8. Department of Housing and Urban Development 22
9. Department of Labor 25
10. Department of Transportation 28
    Federal Aviation Administration 28
    Federal Highway Administration 30
11. Small Business Administration 33
12. Department of Energy 37
13. Office of Revenue Sharing 38
14. Federal Executive Board 40

Conclusions 42

Findings and Recommendations 44

Tables

2.1 Federal Financial Assistance of the Environmental Protection Agency 5

11.1 Small Business Administration—Civil Rights Unit Functions 35

1. Introduction

In December 1982 the Iowa, Kansas, Missouri and Nebraska Advisory Committees to the U.S. Commission on Civil Rights completed their study of Federal Government internal affirmative action efforts.[1] It was a follow-up to the participation of the Advisory Committees in a study published in 1981 with nine other Advisory Committees on Federal affirmative action efforts.[2] That study had the broader purpose of studying Federal affirmative action compliance activities. Similar studies had been conducted by the Commission and published in the period 1971–present on the Federal civil rights enforcement effort. The Advisory Committees decided to replicate these on the regional level. They wanted to know what compliance authority agencies vested in the regional offices or maintained in headquarters, what staffing and authority were available to civil rights units, what they had done in 1980 and what they proposed to do in 1983. To obtain this information, data requests were sent to the principal regional officials of each department or agency that had regional civil rights operations. In addition, where there were substantial activities but no regional civil rights unit, letters requesting data were sent to the national civil rights units requesting data on their activities in the region. The regional and national replies form the basis for this report.

Before publication, a draft copy of this report was sent to all the Federal agencies mentioned to allow them to correct any inadvertent errors. Their comments and corrections have been incorporated. The Advisory Committees appreciate the effort of the agencies in preparing their responses and comments. Where the U.S. Commission on Civil Rights has reviewed the agency, a summary of the Commission's review has been included. Readers may wish to examine the full Commission reports to understand the setting in which civil rights compliance efforts are undertaken.

Several agencies failed to provide data for this study. The Office of Federal Contract Compliance Programs needed clearance from their national headquarters that was not provided, although there was at least three months between the Advisory Committee request and completion of the draft report.[3] Some national offices promised responses that were not received -the U.S. Department of Agriculture[4] and Office of Personnel Management.[5] We received no response at all from the Departments of Interior and Commerce. The Immigration and Naturalization Service stated it "is not an agency with administrative enforcement responsibility in the area of civil rights."[6] The principal civil rights activities of the Department of Defense and General Services Administration are reviewed in a

[1] Iowa, Kansas, Missouri and Nebraska Advisory Committees, *Federal Affirmative Action in Mid-America* (March 1983).
[2] Thirteen Advisory Committees, *Promises and Perspectives* (October 1981).
[3] Bennie L. Daugherty, Assistant Regional Administrator, OFCCP, letter to staff, Jan. 4, 1983.
[4] F. Cleo Spartin, Acting Director of Minority Affairs, U.S. Department of Agriculture, letter to staff, Apr. 6, 1983.
[5] Gerald H. Adams, Acting Regional Director, OPM, letter to staff, Nov. 30, 1982.
[6] Isaiah Russell, Jr., Director of Equal Opportunity, INA, letter to staff, Apr. 7, 1983.

forthcoming study by the Kansas Advisory Committee of contracting and compliance efforts in Kansas.

Overall coordinating responsibility for Federal efforts to assure nondiscrimination are vested in the U.S. Department of Justice, pursuant to Executive Order 12250.[7] This was done because then President Carter found that there was a lack of civil rights enforcement by the 34 Federal grant agencies charged with that responsibility; overlapping civil rights and programmatic jurisdictions resulting in inconsistent standards, investigative procedures and findings; inadequate coordination and Government-wide leadership; deficient civil rights laws; poor management and inadequate resources. The Justice Department published regulations requiring uniformity in June 1981.[8] It has also reviewed and approved agency plans to implement their civil rights responsibilities and will monitor progress in implementing them.[9]

Under the provisions of OMB Circular A–11, agencies have been submitting reports to the Office of Management and Budget that would allow it to identify the scope of their complaint processing procedures and project future need for effort in this area.[10] This and its general coordinator role places it in a unique position to determine future needs for resources to enforce the Federal antidiscrimination requirements.

In this report Federal fiscal years (October–September) are cited without any notation. Other fiscal years are specified and calendar years are cited as such.

[7] 3 C.F.R. 298 (1981).

[8] 46 Fed. Reg. 34147–52 (June 30, 1981).

[9] U.S. Department of Justice, *Civil Rights Forum*, Vol. 6, No. 1 (Fall 1982), pp. 10–11.

[10] Office of Management and Budget, Preparation and Submission of Budget Estimates; Data on Federal Civil Rights Activities 53.1–53.5.

2. Environmental Protection Agency (EPA)

EPA's civil rights efforts in Region VII are administered from its regional office in Kansas City. Currently, compliance activities are divided in two parts. The Assistant Regional Administrator for Policy and Management also serves as Director of Civil Rights. But the work is carried out by a single EEO Officer who has responsibility for:

—development, coordination, implementation and administration of the region's civil rights and equal opportunity programs;

—internal compliance programs including: affirmative action plan overview; EEO counseling; discrimination complaint processing; Federal Women's Program overview; Hispanic Employment Program overview;

—external compliance programs including: coordination of investigations of discrimination in federally-assisted programs and overview of Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) programs.[1]

This marks a dramatic reduction in resources for this unit compared to 1980 when there were a separate director of the office, two equal employment specialists and two clericals.[2] In addition there was an Hispanic Program Manager on collateral assignment.[3] A second portion of the work is carried out by a single person responsible for the minority/women business enterprise (MBE/WBE) programs of the agency. This person is responsible for assuring compliance with the regulations requiring participation of MBE/WBE in grant construction work and is in the Water Management Division.[4] The major EPA grant program involves wastewater treatment construction. But there are a wide variety of other programs that are also subject to civil rights compliance regulations. These are listed in Table 2.1.

In 1974 the U.S. Commission on Civil Rights noted that EPA's civil rights activities were nearly invisible. There were regulations without teeth or no regulations at all covering the principal civil rights issues. Enforcement was constrained and ineffectual. EPA's director of civil rights in 1975 took the position that his agency's responsibilities for public health outweighed those for civil rights. Thus, he alleged that whenever a water treatment plant was needed it had to be provided even though this might perpetuate a systematic violation of prohibitions against discrimination in a federally-funded program. He alleged that remedy was possible only when specific improvements would deliberately by-pass minority or female persons or households. He denied his agency had any responsibility under Title VIII of the 1968 Civil Rights Act. The Commission urged EPA to by-pass the Title VI termination proceedings and instead refer violators to the Justice Department for civil prosecution.[5]

[1] Morris Kay, Regional Administrator, EPA letter to staff, Dec. 30, 1982 (hereafter cited as EPA Letter), attachment.

[2] Ibid.

[3] Morris Kay, letter to staff, Apr. 14, 1983.

[4] Ibid.

[5] U.S. Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort—1974: Volume VI: To Extend Federal Financial Assistance* (November 1975), pp. 586–595.

The major EPA grant program involves wastewater treatment construction. The Commission noted that in the past many communities were reluctant to provide services to their minority residents and used a variety of devises to avoid doing so. Similarly, a variety of exclusionary laws and practices had been used by communities that received such grants to prevent minority benefit by excluding minorities from the communities. EPA refused to withhold grants under these circumstances, alleging there was no national policy prohibiting such awards (despite the provisions of Title VIII). Similarly, EPA had failed to ensure that its research, training and demonstration programs grants were awarded to institutions that practiced affirmative action. There were no regulations to assure equal employment opportunity by grantees or subgrantees.[6]

EPA's organizational structure, the Commission reported, buried the civil rights compliance units at the national level several levels away from top management. For example, the Title VI program officer was five levels removed from the administrator. Little time was spent by either regional or national staff on Title VI issues. The Commission asserted that EPA failed to enforce its Title VI requirements even in areas of blatant discrimination and failed to ensure that voluntary agreements were implemented.[7]

The Commission noted that in 1974 most regional offices did not have anyone performing a Title VI function. That remained true in 1980. The regional administrator stated that:

> In FY '80 the Environmental Protection Agency had no active Civil Rights/Antidiscrimination Program. The External Compliance guidelines are currently under final review and will become effective during FY '83.[8]

Similarly, he noted that "Contract compliance activities are not currently being performed by regional staff. Nondiscrimination in Federally Assisted Programs is currently in draft form and under final review in headquarters."[9] The draft regulations establish the bases for conduct of mandatory preaward reviews and discretionary postaward reviews. These can cover a wide range of EPA programs. (These are listed in Table 2.1.) They implement the civil rights protections provided under Title VI of the 1964 Civil Rights Act, and Sec. 13 of the Federal Water Pollution Control Act Amendment of 1972, consolidating EPA's regulations governing nondiscrimination based on race, sex, age, national origin and handicap.[10] The proposed final regulations do not specify whether the regional offices will have any role in their administration. But EPA's regional administrator said the EEO officer would be responsible for administration when the rules are final and staff would be added if necessary.[11] They do require the recipient to identify areas of noncompliance but do not require corrective action based on this self-analysis. Recipients are required to maintain employment data but not to submit it. The basic procedures are similar to traditional Title VI methods.[12] In most agencies this would imply a role for the regional office. But it is clear there is insufficient staff at the regional level already involved in civil rights activities to undertake the reviews contemplated as mandatory, much less perform the postaward reviews. Certainly, the regional office would be unable, at 1983 staffing levels, to review even a small proportion of the paper that might be generated by even a few of its recipients. An internal office memorandum prepared by staff of the civil rights office in Region VII noted that it would take at least three people just to do construction award reviews. It expressed concern about the implementation plan because it would be "damaging to our relationships with State and local governments." In particular, it objected to EPA officials having to encourage use of general revenue funds to finance hook-up fees in lieu of initial private assessments when those could result in denial of benefits on the bases of race, color or national origin. It argued that the discriminatory effect of high fees was questionable, agency authority dubious and the only impact would be tension between EPA and local governments. It argued that it would be impossible to determine whether zoning practices were discriminatory and to do so would adversely affect EPA/government relations.[13]

Prior to May 1982, there was the semblance of a contract compliance program in that there were clear goals for the utilization of MBE or WBE on

[6] Ibid., pp. 596–612.
[7] Ibid., pp. 613–644.
[8] EPA Letter.
[9] Morris Kay, letter to staff, Dec. 13, 1982 (hereafter cited as EPA Letter II).
[10] EPA Letter, attachment.
[11] Morris Kay, letter to staff, Apr. 14, 1983.
[12] EPA Letter, attachment.
[13] Gene Ramsey, Management Systems and Analysis Staff, memorandum to John L. Arendale, Assistant Regional Administrator for Policy and Management, "Implementation Plan for External EEO Compliance," Aug. 31, 1982.

TABLE 2.1

Federal Financial Assistance of the Environmental Protection Agency

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1. Assistance provided by the Office of Air, Noise and Radiation under the Clean Air Act of 1977, as amended; Pub. L. 95-95, 42 USC 7401 *et seq.* (ANR 66.001)

2. Assistance provided by the Office of Air, Noise, and Radiation under the Clean Air Act of 1977, as amended; Pub. L. 95-95; 42 USC 7401 *et seq.* (ANR 66.003)

3. Assistance provided by the Office of Water under the Clean Water Act of 1977, as amended; Sections 101(e), 109(b), 201-05, 207, 208(d), 210-12, 215-19, 304(d)(3), 313, 501, 502, 511 and 516(b); Pub. L. 97-117: Pub. L. 95-217; Pub. L. 96-483; 33 USC 1251 *et seq.* (OW 66.418)

4. Assistance provided by the Office of Water under the Clean Water Act of 1977, as amended; Sec. 106; Pub. L. 95-217; 33 USC 1251 *et seq.* (OW 66.419)

5. Assistance provided by the Office of Water under the Clean Water Act of 1977, as amended; Pub. L. 95-217; 33 USC 1251 *et seq.* (OW 66.426)

6. Assistance provided by the Office of Water under the Public Health Service Act, as amended by the Safe Drinking Water Act, Pub. L. 93-523; as amended by Pub. L. 95-190; Pub. L. 96-63; and Pub. L. 96-502. (OW 66.432)

7. Assistance provided by the Office of Water under the Safe Drinking Water Act, Pub. L. 93-523, as amended by Pub. L. 96-63, Pub. L. 95-190, and Pub. L. 96-502. (OW 66.433)

8. Assistance provided by the Office of Water under the Clean Water Act of 1977, Section 205(g), as amended by Pub. L. 95-217 and the Federal Water Pollution Control Act, as amended; Pub. L. 97-117; 33 USC 1251 *et seq.* (OW 66.438)

9. Assistance provided by the Office of Water under the Resource Conservation & Recovery Act of 1976; as amended by the Solid Waste Disposal Act; Pub. L. 94-580; Sec. 3011, 42 USC 6931, 6947, 6948-49. (OW 66.451)

10. Assistance provided by the Office of Research and Development under the Clean Air Act of 1977, as amended; Pub. L. 95-95; 22 USC *et seq.*; Clean Water Act of 1977, as amended; Pub. L. 95-217; 33 USC 1251 *et seq.*, Sec. 8001 of the Solid Water Disposal Act, as amended by the Resource Conservation & Recovery Act of 1976; Pub. L. 94-580; 42 USC 6901, Public Health Service Act as amended by the Safe Drinking Water Act as amended by Pub. L. 95-190; Federal Insecticide, Fungicide & Rodenticide Act; Pub. L. 95-516; 7 USC 136 *et seq.*, as amended by Pub. L.'s 94-140 and 95-396; Toxic Substances Control Act; 15 USC 2609; Pub. L. 94-469. (ORD 66.500)

11. Assistance provided by the Office of Research and Development under the Clean Air Act of 1977, as amended; Pub. L. 95-95; 42 USC 7401 *et seq.* (ORD 66.501)

12. Assistance provided by the Office of Research and Development under the Federal Insecticide, Fungicide & Rodenticide Act, Pub. L. 95-516, 7 USC 136 *et seq.*, as amended by Pub. L.'s 94-140 and 95-396. (ORD 66.502)

13. Assistance provided by the Office of Research and Development under the Solid Waste Disposal Act, as amended by the Resource Conservation & Recovery Act of 1976; 42 USC 6901, Pub. L. 94-580, Sec. 8001. (ORD 66.504)

14. Assistance provided by the Office of Research and Development under the Clean Water Act of 1977, as amended; Pub. L. 95-217; 33 USC 1251 *et seq.* (ORD 66.505)

15. Assistance provided by the Office of Research and Development under the Public Health Service Act as amended by the Safe Drinking Water Act, as amended by Pub. L. 95-190. (ORD 66.506)

16. Assistance provided by the Office of Research and Development under the Toxic Substances Control Act; Pub. L. 94-469; 15 USC 2609; Sec. 10. (ORD 66.507)

17. Assistance provided by the Office of Administration, including but not limited to: Clean Air Act of 1977, as amended, Pub. L. 95-95; 42 USC 7401 *et seq.*, Clean Water Act of 1977, as amended; Pub. L. 95-217; 33 USC 1251 *et seq.*; Solid Waste Disposal Act, as amended by the Resource Conservation & Recovery Act of 1976; 42 USC 6901; Pub. L. 94-580; Federal Insecticide, Fungicide & Rodenticide Act; Pub. L. 92-516; 7 USC 136 *et seq.*, as amended by Pub. L.'s 94-140 and 95-396; Public Health Service Act, as amended by the Safe Drinking Water Act, as amended by Pub. L. 95-190. (OA 66.600)

18. Assistance provided by the Office of Administration under the Clean Water Act of 1977, as amended; Pub. L. 95-217; Section 213; 33 USC 1251 *et seq.* (OA 66.603)

19. Assistance provided by the Office of Enforcement Counsel under the Federal Insecticide & Rodenticide Act, as amended; Pub. L. 92-516; 7 USC 136 *et seq.*, as amended by Pub. L. 94-140, Section 23(a) and Pub. L. 95-396. (OA 66.700)

20. Assistance provided by the Office of Solid Waste and Emergency Response under the Comprehensive Environmental Responses, Compensation and Liability Act of 1980; Pub. L. 96-510, 42 USC 9601, *et seq.* (OSW—number not yet assigned)

21. Assistance provided by the Office of Water Programs Operations under the Municipal Grant Amendment of 1981; Section 205(j)(Clean Water Act as amended); Pub. L. 97-117, 33 USC 1313. (OW—number not yet assigned)

Source: EPA

funded projects and a requirement that noncompliance with these be explained. The regional office was responsible for conducting reviews to ensure that this compliance occurred. But these guidelines applied only to contracts of more than $400,000. Under these regulations, regional offices were required to:

—establish a Minority Business Enterprise Program, and work in coordination with the Water Division Director to develop and implement the regional program.

—The Regional Director of Office of Civil Rights and Urban Affairs (OCRUA) was to be the regional Minority Business Enterprise Officer.

—Monitor implementation of this policy through the OCRUA and the Water Division. The region shall:

(i) notify States and grantees, in writing, of this MBE policy;

(ii) review solicitation inserts of applicants/grantees to determine whether the appropriate goal is included in all solicitations for contracts under grants;

(iii) review all proposed contract awards to evaluate the sufficiency of positive efforts;

(iv) inform the grantee after the preaward evaluation if a prospective consultant or contractor fails to conform to the positive efforts requirements; advise the grantee of possible corrective actions that can be taken by the prospective consultant or contractor; and advise the grantee that approval of the proposed contract award may be withheld until the deficiencies are corrected;

(v) review and determine the adequacy of the positive efforts after a contract is awarded;

(vi) where the review discloses failure on the part of the consultant or contractor to take positive efforts, the regional MBE Officer shall inform the grantee that failure on the part of the consultant of contractor and the grantee to show why the corrective action cannot be taken, would lead to the initiation of proceedings for imposition of sanctions which could include withholding of grant payments; and

(vii) report to Headquarters quarterly on the status of the regional program, including contracts awarded to MBE.[14]

But under the regulations issued in May 1982, all responsibility for assuring minority- or women-owned business enterprise participation is assigned to grant recipients. EPA stated that it will not "substitute its judgment for that of the recipient unless the matter is primarily a Federal concern."[15] The requirement that specific goals be achieved or an explanation for noncompliance provided is eliminated both as regards EPA review is concerned and as an obligation to be reviewed by the grantee.[16] Recipients are merely required to provide an assurance at intervals that their procurement system satisfies all the requirements of Federal law.[17]

In short, EPA compliance activities in the region remain, as they were in 1974, nonexistent. There is no evidence that the current practices will result in enforcement of the civil rights requirements connected to agency grants. Indeed, there is evidence of a retreat from pre-existing compliance efforts, weak as those were. The combination of national policy and local practice seems to ensure that minorities, women and other groups likely to be victims of discrimination can get no effective redress.

[14] EPA Letter II, attachment.

[15] 47 Fed. Reg. 20478–9.

[16] Ibid.

[17] Ibid., p. 2047.

3. Department of Education (Office for Civil Rights)

The civil rights work of the Department of Education is assigned entirely to the Office for Civil Rights (OCR). The office, like the department, is a spinoff of the education functions administered prior to May 1980 by the Department of Health, Education and Welfare.

The regional Office for Civil Rights administers the agency's responsibilities in Iowa, Kansas, Missouri and Nebraska. It reports directly to OCR headquarters in Washington. In December 1982 it had a staff of 51 persons, 41 of whom were professional or administrative workers. There were also two part-time employees and one position was vacant. In 1980 there had been a staff of 60 and three part-time employees. Thus the unit had lost nine full-time staff and one part-time staff in the interval.[1] This meant the staff was reduced by 15 percent. The office has six units: Office of the Regional Director, Chief Regional Civil Rights Attorney, Regional Technical Assistance Staff, Elementary and Secondary Education, Postsecondary Education, Program Review and Management Support. The two education units are responsible for most of the compliance activities. They conduct complaint investigations or compliance reviews, negotiate for voluntary compliance and monitor implementation of agreements.[2]

Describing its own jurisdiction, OCR stated:

> OCR enforces law that prohibit discrimination on the bases of race, color, national origin, sex, handicap, and/or age in all programs and institutions that receive Federal funds from the Department of Education.

There have been no substantial changes in OCR's four jurisdictional authorities from FY 1980 to FY 1983. These jurisdictional authorities are:

> *Title VI of the Civil Rights Act of 1964* (Title VI), 42 U.S.C. Sec. 2000-d *et seq.*, 34 C.F.R. Part 100, 101.
>
> OCR has jurisdiction under Title VI to investigate all service complaints and certain employment complaints based on race, color, or national origin. Regarding employment complaints alleging discrimination, OCR has jurisdiction in those cases clearly concerning:
>
> A. Racial or ethnic discrimination against employees who work directly with beneficiaries, administrators whose decisions affect service delivery or applicants for those positions; and
>
> B. When there is:
>
> 1. An apparent pattern and practice of discrimination against employees; or
>
> 2. Discrimination against one or more employees which adversely affects a recipient's ability to provide nondiscriminatory services; or
>
> 3. A reduction in the recipient's work force which adversely affects minorities.
>
> *Title IX of the Education Amendments of 1972* (Title IX) 29 U.S.C. Sec. 1681, 34 C.F.R. Part 106.
>
> OCR has jurisdiction under Title IX to investigate student services and employment complaints alleging sex discrimination in any education program or activity receiving Federal financial assistance from the Department of Education.

[1] Jesse High, Regional Director, Office for Civil Rights, Department of Education, letter to staff, Jan. 18, 1983 (hereafter cited as OCR Letter) and attachments.

[2] Ibid.

A 1979 decision by the Eighth Circuit Court of Appeals invalidated OCR's Title IX employment regulations at 34 C.F.R. Part 106, Subpart E. Therefore, claims of employment discrimination were only investigated under Subpart D of 34 C.F.R. Part 106 where:

1. The allegedly discriminatory employment practice may have had a discriminatory impact upon beneficiaries of Federal aid; or

2. The principal purpose of the funds received by the recipient was to provide employment.

In May 1982, the United States Supreme Court upheld the validity of the Title IX employment regulations at 34 C.F.R. Part 106, Subpart E. The Court's decision in *North Haven Board of Education v. Bell,* 102 S.Ct. 1912 (1982), authorized Region VII to investigate claims of sex discrimination in employment.

Section 504 of the Rehabilitation Act of 1973 (Section 504) 20 U.S.C. Sec. 794, 34 C.F.R. Part 104.

OCR has jurisdiction under Section 504 to investigate student services complaints and *certain* employment complaints alleging discrimination based on handicap in any program or activity receiving Federal financial assistance from the Department of Education. As a result of a 1980 decision by the Eighth Circuit Court of Appeals, the office investigates Section 504 employment complaints within Missouri, Iowa, or Nebraska only when the cases meet either of the two exceptions noted by the court:

1. Cases where the principal purpose of the Federal funds received by the employer or grantee is to provide employment; and

2. Cases where discrimination in employment results in discrimination against the intended beneficiaries of the Federal aid.

Age Discrimination Act of 1975, 42 U.S.C. Sec. 6101 *et seq.*

The Department of Education is currently developing its own agency-specific regulations as required by the Act. In the interim, the office follows the general government-wide regulations published by the former Department of Health, Education, and Welfare on June 12, 1979, at 45 C.F.R. Part 90.

The Age Discrimination Act prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act also contains certain exceptions which permit, under limited circumstances, continued use of age distinctions or factors other than age which may have a disproportionate effect on the basis of age.[3]

In 1982 the universe subject to OCR review in Region VII included 2,390 school districts and 232 higher education institutions with a student population of 2,935,357.[4]

The U.S. Commission on Civil Rights has been reviewing the activities of OCR ever since it began its studies of Federal compliance efforts. In 1975 it published its most recent of its enforcement study reviews of the agency.[5] Many of the Commission's 1975 complaints were substantive—procedural failings or incorrect interpretations of the law or regulations—attributable to national policy decisions. The Commission was particularly concerned about the failure to collect or properly utilize necessary data and the absence of adequate guidelines defining various forms of discrimination. It stated that there had been insufficient Title VI reviews and that several regional offices, such as Kansas City's, had conducted only one such review. It noted that the time consumed in these reviews and the negotiations for compliance that followed vitiated any potential benefits and that even when agreements were reached, there were no follow-up reviews to monitor compliance. The Commission further noted failure by OCR to resolve the status of 56 school districts mentioned in the *Adams v. Richardson* order requiring prompt determination of compliance with Title VI by districts found to have been maintaining segregated schools.[6]

The Commission again reviewed OCR's activities in 1979.[7] It noted that the General Accounting Office had found substantial process deficiencies including lack of uniform policy guidelines.[8] The Commission noted a continued reluctance by HEW to terminate the funds of school districts that discriminated and although it sympathized with the objective of not hurting students, pointed out that alternative sanctions had not been devised.[9] The Commission had similar complaints about failure to enforce the requirement under *Lau* that non-English

[3] Ibid.
[4] Ibid.
[5] U.S. Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort—1974: Volume III: To Ensure Equal Educational Opportunity* (January 1975).
[6] Ibid., pp. 356–362.
[7] U.S. Commission on Civil Rights, *Desegregation of the Nation's Public Schools: A Status Report* (February 1979).
[8] Ibid., p. 14.
[9] Ibid., p. 18.

speaking students be afforded equal educational opportunities.[10]

OCR reported it closed 215 complaints during 1980. But many of these were administrative closings. In 48 complaints, OCR investigation revealed no violation. In 17, complainants withdrew complaints "after acquiring satisfactory changes" and in 36 the grant recipient "carried out to OCR's satisfaction the required remedial action to be in compliance."[11] Of 30 reviews scheduled, seven never began. Four reviews resulted in no findings of violation and 19 were closed after the recipient presented an acceptable "remedial action or corrective action plan."[12]

The Regional Technical Assistance Staff served between 41-68 requestors for assistance each month during the period December 1981-March 1983. Each month during that period it made between two and seven on-site visits, provided speakers for between eight and 32 public forums, provided between eight and 20 written responses to requests for information and between 33 and 67 telephone responses. Most of its work involved providing data on the best and cheapest way to assure access for the handicapped. But it also was involved in assisting school districts with legal and practical problems of mainstreaming and provided some parents and handicapped organizations with information or presentations about the rights of the handicapped in the educational system.[13] A small proportion of the staff's activities involved services to women (under Title IX) or minority handicapped persons.[14]

For FY 1983, OCR had 112 complaints open as of the start of the fiscal year, 13 scheduled compliance reviews and nine monitoring reviews. For the third and fourth quarters it proposed to add eight elementary and secondary education compliance reviews and three post-secondary compliance reviews. By January 1, 1983 it had closed 51 complaints, three compliance reviews and five monitoring reviews.[15]

[10] Ibid., p. 24.
[11] OCR Letter.
[12] Ibid.
[13] Monthly reports of the Regional Technical Assistance Staff, December 1981-March 1983, on file at CSRO.
[14] Ibid.
[15] U.S. Department of Education, Office for Civil Rights, Region VII, Regional Office, Highlights Reports (Oct. 1, 1982-Feb. 1, 1983).

In short, it should be evident from a comparison of the universe and what was done in 1980 and projected for 1983 that only a small portion of the universe can be covered. There was no change in the volume of reviews projected during 1983 compared to 1980. If the volume of complaints remains equal to 1980, the volume of closures would appear likely to be comparable. OCR states that it is:

> legally required to investigate civil rights compliance during complaint investigations, which comprise by far the bulk of OCR's civil rights compliance activities. . . .Therefore, when complaint investigations are counted, many more recipients are reviewed than the number of compliance and monitoring review sites suggests. Second, a compliance review may be of limited scope and may not accurately provide a picture of civil rights compliance under all jurisdictions, and therefore, may not be as beneficial as a complaint investigation in some instances.[16]

But the Commission on Civil Rights has noted that "OCR's compliance reviews result in twice as many remedies and benefit six times as many victims of discrimination as its complaint investigations."[17] In 1981 the Commission noted that budget reductions seemed likely to result in more narrowly focused compliance reviews and fewer of them.[18] Apparently this has happened. If OCR's assertion that complaint and compliance review investigations should be treated as equally effective were accepted then OCR apparently was able to review 63 separate facilities during 1980 out of a universe of 2,622 school districts or higher education facilities (the complaints actually investigated covered 53 institutions and 10 institutions investigated involved both complaints and compliance reviews).[19] Even if the rate of review more than doubled, to about 150 institutions per year, it would still take about 17 years to review all the institutions in the universe, assuming complainants never complained about the same institution and only new reviews were conducted. In short, for the bulk of its jurisdiction, OCR can have no idea whether the civil rights laws are being complied with.

[16] Jesse High, letter to staff, Mar. 31, 1983.
[17] U.S. Commission on Civil Rights, *The Federal Civil Rights Enforcement Budget: Fiscal 1983* (June 1982), p. 16.
[18] U.S. Commission on Civil Rights, *Civil Rights: A National, Not A Special Interest* (June 25, 1981), p. 46.
[19] John Nett, OCR, telephone interview, Apr. 19, 1983.

4. Federal Deposit Insurance Corporation (FDIC)

Along with the Federal Reserve System, the Office of the Comptroller of the Currency and the Federal Home Loan Bank Board, FDIC has responsibilities under Title VIII of the 1968 Civil Rights Act, the Equal Credit Opportunity Act, the Home Mortgage Disclosure Act and the Community Reinvestment Act of 1977 to assure nondiscrimination in lending. FDIC is responsible for reviews of State-chartered banks that are not members of the Federal Reserve System.[1] The four banking organizations all administer a common body of regulations, issued by the Federal Reserve Board: Regulation B which prescribes what banks must do under the provisions of the Equal Credit Opportunity Act and Regulation C which prescribes what banks must do to collect and maintain data required in the Home Mortgage Disclosure Act.

Two offices, one in Kansas City and one in Omaha, serve the four States in Federal Region VII. The Kansas City office serves Missouri and Kansas, the Omaha office serves Iowa and Nebraska. Under the overall supervision of a regional director, each office has a Reviewer Examiner (Consumer Affairs/Civil Rights) and a Consumer Affairs/Civil Rights Assistant.[2] The Kansas City Consumer Affairs office has a staff of 11; the Omaha office has a staff of eight but also has other staff detailed to it from time to time.[3] Data supplied by FDIC show that in 1981 there were 510 banks in Iowa, 448 in Kansas, 578 in Missouri and 331 in Nebraska that were subject to FDIC review as insured nonmembers of the Federal Reserve system. Thus, in the four States there are a total of 1,867 banks in its universe. Including branches, there were 2,811 facilities subject to review.[4] Data on the assets of these banks alone were not available. But all commercial banks in the region (some of which are reviewed by other agencies) had assets of $95,527.1 million.[5]

The activities of FDIC were most recently reviewed by the U.S. Commission on Civil Rights in its 1979 study, *The Federal Fair Housing Enforcement Effort.*[6] The Commission praised FDIC's regulations to implement Regulation B as "by far the most comprehensive and useful data collection provisions thus far proposed by any of the four financial regulatory agencies." It covers all types of housing-related loans, requires loan application "log sheets," requires lender's designation of an applicant's race and sex if the applicant chooses not to provide the information, it also covers oral requests that do not

[1] U.S. Commission on Civil Rights, *The Federal Fair Housing Enforcement Effort* (March 1979), pp. 76–78.

[2] Rex Morthland, Director, Office of Consumer Programs, FDIC, letter to staff, Jan. 19, 1983 (hereafter cited as FDIC Letter).

[3] Hugh Eagleton, Supervisory Consumer Programs Specialist, FDIC, telephone interview, Feb. 10, 1983.

[4] FDIC, *1981 Statistics on Banking* (n.d.), Table 103.

[5] Ibid., Table 105.

[6] U.S. Commission on Civil Rights, *The Federal Fair Housing Enforcement Effort* (March 1979).

become formal written applications, and identification of the census tract of the property.[7]

The Commission urged the regulators, including FDIC, to transfer the burden of proof of nondiscrimination to creditors when statistical data showed disparities. FDIC objected that this would require a legal or administrative proceeding that was neither practical nor necessary. It contended that the examiner's report would provide a firmer basis for charging discriminatory practices and that data alone was insufficient.[8] The Commission reviewed a limited number of FDIC files on compliance reviews. The Commission stated:

> FDIC sent this Commission three examination files. As is the case with FRB, it appears from an analysis of these files that the use of reporting forms in fair housing examinations which require a yes or no response limits the type of fair housing findings made by FDIC examiners. One examination report revealed that an institution failed to collect racial and ethnic and sex data but was at the same time judged to have policies and procedures which were "nondiscriminatory with respect to the receipt, evaluation and subsequent action on mortgage and home improvement loan applications." Such a determination has little meaning when made in the absence of relevant data.
>
> The three fair housing examination files revealed the following four violations in one or more instances:
>
> —Failure to display the equal lending poster.
>
> —Failure of mortgage loan advertisements to contain required fair housing statement.
>
> —Failure to notify applicants of adverse actions.
>
> —Failure to request racial, ethnic, and sex data on housing loan application forms.
>
> In all instances, the bank in question promised to correct the violations.[9]

The Commission was satisfied with FDIC's procedures for processing complaints of discrimination. It stated that the procedures "are comprehensive and provide excellent instructions for examiner investigation of complaints."[10]

During 1980 the reviewers in the two regional offices conducted reviews for compliance with the various civil rights rules once every 18 months. If the bank had 50 or more employees and either a treasury tax and loan account or acted as an agent for the sale and/or redemption of U.S. Savings Bonds and Notes, the examiner also ensured that the bank filed an EEO-1 form on its employees with the U.S. Equal Employment Opportunity Commission and that there was a written affirmative action program on file. Examiners conducted more frequent examinations if there had been problems uncovered in earlier reviews.[11] During the period January–September 1980, the examiners made 914 examinations, approximately half the banks subject to review, and found 413 instances of Equal Credit Opportunity Act regulations and 625 instances of Fair Housing violations. While the number of violations appears high, FDIC notes that "these violations were not substantive but highly technical in nature."[12] Some of these examinations may have been repeat visits to a bank that was not in full compliance. In addition, the regional offices received and acted upon 16 equal credit opportunity and one fair housing complaint.[13] The two offices devoted 14,036 person/hours to civil rights compliance—7 person/years.[14]

As part of their examinations, the examiners also provide technical assistance. FDIC stated:

> Our examiners provide a great deal of information to bankers during the regular course of compliance examinations and visitations. The information includes methods and approaches to achieving compliance as well as explanations and clarifications of the requirements and proscriptions of regulations. The FDIC also provides information to bankers by means of various consumer compliance seminars conducted around the country. These seminars are designed to educate bankers concerning the range of consumer protection and civil rights laws and regulations and to assist them in their compliance efforts.[15]

There are changes in the pattern of regulation, beginning in 1983. Banks will be reviewed at least every 36 months if previous reviews disclose no pattern of violation or "although a system of internal operating procedures and controls has been established to ensure compliance, violations have nonetheless occurred," provided the violations are purely technical and "there is no evidence of discriminatory

[7] Ibid., p. 90.
[8] Ibid., p. 92.
[9] Ibid., p. 94.
[10] Ibid., p. 100.
[11] FDIC Letter.
[12] Ibid.
[13] " ".
[14] Ibid.
[15] Ibid.

acts or practices, reimbursable violations, or practices resulting in repeat violations."[16] Banks will be reviewed at least every 18 months if "there is cause for supervisory concern" and the bank "requires more than normal supervision to remedy deficiencies," provided there is "no evidence of discriminatory acts or practices."[17] Banks will be reviewed every 12 months if there are discriminatory acts or practices and "management has not exerted sufficient effort to ensure compliance," or in instances where the bank is seemingly unable or unwilling to comply with the consumer statutes and regulations.[18] If the purely technical violations are included in these categories, then banks whose practices might discriminate would be subject to annual review that ought to ensure adequate supervision of corrective efforts. Additional examiner visits are scheduled as necessary at the discretion of the FDIC Regional Director. The new examination scheduling process allows the FDIC to focus its examinations on problem and near problem resolutions.[19] The two FDIC offices project a total of 1,185 reviews in 1983.[20]

[16] Ibid. and attachment.
[17] Ibid.
[18] Ibid.

[19] Rex J. Morthland, letter to staff, Apr. 1, 1983.
[20] Hugh Eagleton, Supervisory Consumer Programs Specialist, FDIC, telephone interview, Feb. 10, 1983.

5. Federal Home Loan Bank Board (FHLBB)

Like the other financial regulatory agencies, the FHLBB is charged with duties pursuant to Title VIII of the Civil Rights Act of 1968, the Equal Credit Opportunity Act, the Home Mortgage Disclosure Act and the Community Reinvestment Act. The FHLBB is responsible for reviewing all savings and loan institutions insured by Federal Savings and Loan Insurance Corporation. The Commission noted that FHLBB has acknowledged it has a responsibility to enforce Title VI of the 1964 Civil Rights Act by virtue of the loans it makes to member institutions, and had issued regulations for that purpose. It had also issued regulations to cover its activities under its other civil rights authorities.[1]

The FHLBB's activities in Iowa, Kansas, Missouri and Nebraska are administered by district offices in Topeka and Des Moines. The Des Moines District Office also covers the States of Minnesota, North Dakota and South Dakota. The Topeka District Office also covers the States of Colorado and Oklahoma. Each of these has a District Civil Rights Specialist who performs civil rights functions on a part-time basis and reports to the Assistant District Director for Operations. The FHLBB stated:

> The duties of the District Civil Rights Specialists include but are not limited to:
>
> —Providing technical assistance and guidance to the examining staff with regard to nondiscrimination in lending and equal credit opportunity;
>
> —Recommending procedural changes and coordinating the training of the examining staff in all matters relating to fair housing and other civil rights requirements;
>
> —Maintaining quality control to assure that appropriate procedures are followed uniformly and expeditiously in each area office;
>
> —Answering questions and providing information and assistance to the savings and loan industry as needed;
>
> —Attending courses and seminars to keep abreast of changes in the area of fair housing and equal credit opportunity; and
>
> —Preparing periodic reports and maintaining accurate records of examination results and other civil rights matters.[2]

The entire civil rights compliance effort of the FHLBB is supervised by its Division of Consumer/Civil Rights in the Office of Examinations and Supervision.[3] Examiners review the activities of "financially sound institutions" approximately every 18 months.[4] The FHLBB stated:

> All regularly scheduled examinations cover a review of the savings and loan association's compliance with the Fair Housing Act and ECOA. During the examination,

[1] U.S.Commission on Civil Rights, *The Federal Fair Housing Enforcement Effort* (March 1979), pp. 77–82.
[2] Cynthia N. Graae, Director, Consumer and Civil Rights, FHLBB, letter to staff, Jan. 12, 1983 (hereafter cited as FHLBB letter).
[3] Ibid.
[4] Ibid.

examiners inform savings and loan associations of the requirement to adhere to all Federal rules and regulations including these Acts. When an institution appears to be in violation of either Act, the examiner notes the practice in question. If necessary, the supervisory agent follows up with a written request that the institution alter its policies to comply with the law.[5]

FHLBB also collects data pursuant to the Home Mortgage Disclosure Act and the Community Reinvestment Act. The former duplicates, in part, data collected by FHLBB and therefore the examiners prefer to use their own data. The examiners do review the Community Reinvestment Act data to determine the extent to which S&Ls do serve their community. They may order the institutions to take appropriate corrective action and this may be monitored from Washington. In addition, when protests are received about failure to invest in the community at a time when the institution is expanding or moving, FHLBB sometimes imposes conditions involving improved performance as part of granting the requested change. A study done by FHLBB shows that these conditions have resulted in improved community reinvestment by institutions which have been subject to them. FHLBB could also deny a requested change, but this has not yet been done.[6] There are a total of 281 savings and loan associations in the four States subject to FHLBB jurisdiction.[7]

The Commission on Civil Rights reviewed the activities of the FHLBB in its 1979 report on fair housing. It praised the FHLBB for leading other financial regulators in pointing out that refusal to lend solely because of the age of a home or the income level in the area might be discriminatory.[8] It noted that FHLBB issued Title VIII regulations prohibiting discrimination in financing housing far earlier than did the other financial institution regulators. The Commission praised FHLBB's 1978 amendment of its regulations which include provisions:

—Requiring written loan underwriting standards of all member institutions.

—Prohibiting redlining due to the age and location of a dwelling.

—Requiring a loan application register which denotes the race, sex, marital status, and age of the applicant and co-applicant; the census tract of the property; loan terms; and final disposition of the application.

—Provision for the lending institution to designate the race and/or sex of applicants on application forms where applicants fail to do so.

—Prohibiting reliance on appraisals which the institution knows, "or reasonably should know, is discriminatory on the basis of age or location of the dwelling, or is discriminatory per se or in effect" under Title VIII or Equal Credit Opportunity Act (ECOA).

The amended guideline also requires that lenders not only refrain from discriminating in their own lending practices, but also avoid doing business with developers and real estate brokers who discriminate. The Commission has long advocated such a stance by the financial regulatory agencies. The positive guideline changes also include:

—Discouraging lenders from requiring that persons to whom they extend loans have "done business" with the institution in the past.

—Prohibiting inquiries into the childbearing intentions of applicants.

—Advising institutions to review their advertising and marketing practices to ensure "that their services are available without discrimination to the community they serve."

—Prohibiting "use of unfounded or unsubstantiated assumptions regarding effect upon loan risk of. . .the physical or economic characteristics of an area.[9]

But it remained dissatisfied with some of the new regulations.

The loan register which is required by the regulation does not require notation of creditworthiness information in conjunction with race, sex, marital status, and age data as required by the 1977 proposed version, the final regulation does not require reporting to FHLBB the number of loan applications received, approved, or denied (or otherwise adversely acted upon) by race, sex, and marital status, as required in the 1977 proposed regulation. A major deficiency of the FHLBB regulation and guideline, is that, like Regulation B, they provide no instructions as to how and within what time frames enforcement actions are to take place.[10]

[5] Ibid.
[6] Cynthia Graae, telephone interview, Feb. 10, 1983.
[7] FHLBB Letter.
[8] U.S. Commission on Civil Rights, *The Federal Fair Housing Enforcement Effort*, p. 85.
[9] Ibid., p. 86 (footnotes omitted).
[10] Ibid., p. 87.

The Commission's review of a small sample of examinations showed that the examiners did understand the regulations they were implementing and generally enforced them, although the Commission noted that formal enforcement action had not been taken against one institution despite three annual examinations which revealed civil rights violations. The Commission praised FHLBB for looking beyond the rationalizations and excuses offered by institutions for possible and actual illegal practices.[11]

Commenting on changes that had occurred in 1980 and beyond, the FHLBB stated:

> Since October 1980, the Bank Board has required all regulated institutions to maintain an expanded (from earlier requirements) Loan Application Register (LAR) on all applications received for mortgage, home improvement, and mobile home loans. All institutions receiving mortgage loan applications, and those receiving more than 50 home improvement or 50 mobile home applications semi-annually, must summarize the Loan Application Register information on a Data Submission Report (DSR) transmitted to the Bank Board for analysis. The Data Submission Reports summarize the receipt and disposition of loan applications by race, sex, and marital status of applicants and by the economic and racial characteristics of the census tracts in which the property is located. Bank Board Regulation 528.6 provides instructions for the preparation of these forms.
>
> In May 1981, the Bank Board issued a new examination program, EOP 123/001, to guide examiners in using the LAR and DSR for focusing on associations with potentially serious lending problems. This was supplemented in August 1981 by a "Guide for Detecting and Reporting Violations of the Fair Housing and Equal Credit Opportunity Acts," issued to further assist examiners in evaluating the seriousness of nondiscrimination violations. Also in 1981, the Bank Board revised its forms for reporting consumer violations, including Equal Credit Opportunity Act violations.
>
> Fiscal year 1982 (October 1, 1981, through September 30, 1982) was the first full year of the Bank Board's operation of a system that uses the above regulations, procedures, and forms and that is aimed at focusing the Bank Board's Fair Housing/Equal Credit Opportunity Act resources on the detection and remedy of substantive (as opposed to technical) civil rights violations. This new system enables examiners to: 1) target for intensive review associations in which there is possible discrimination and 2) minimize attention to associations in which discrimination is unlikely.[12]

FHLBB did not have detailed data readily available on their 1980 reviews divided by District Offices to States. They did provide national data. In calendar year 1980 the Bank Board examined for compliance with Title VIII, the Equal Credit Opportunity Act, and the Bank Board's nondiscrimination regulations in 3,291 savings and loan associations. Each review was conducted as part of a regularly scheduled examinations for safety and soundness. In those examinations the Board found no violations in 676 associations (24 percent of those examined); the Bank Board also found 160 substantive violations and 39,197 technical violations in 2,515 associations (76 percent of those examined). In 1,034 associations (of the 2,515 with violations) the problems were sufficiently minor and technical that they were corrected by the examiner on-site; in 1,344 association, the Bank Board followed up with supervisory letters; in the remaining 137 associations, the violations were severe enough to be followed up not only with a supervisory letter but also with monitoring from Washington.[13]

In calendar year 1980, the Bank Board received 128 complaints alleging discrimination (i.e., violations of Title VIII and/or the Equal Credit Opportunity Act). Of these, seven were found to be justified. In addition, the Bank Board received 146 complaints alleging an association's failure to provide an adverse action notice.[14]

The two district offices that serve Region VII expect to conduct a total of 253 reviews of savings and loans in 1983.[15]

FHLBB reported that its civil rights activities were unaffected by budget cuts and that its administration staff remains at 1980 levels.[16]

It would appear that FHLBB has a comprehensive and effective system for monitoring compliance with the various civil rights requirements. The Commission has noted that FHLBB has been far more willing to use its regulatory authority to ensure compliance than have other Federal bank regulatory agencies.

[11] Ibid., pp. 95–98.
[12] FHLBB Letter.
[13] Cynthia Graae, letter to staff, Apr. 1, 1983.
[14] Ibid.
[15] FHLBB Letter.
[16] Ibid.

6. Federal Bureau of Investigation (FBI)

In Region VII, three supervisory offices of the FBI coordinate the civil rights work of the agency. The FBI's office in Kansas City supervises efforts in the Western District of Missouri and Kansas. The FBI's office in St. Louis supervises work in the Eastern District of Missouri. The FBI's office in Omaha supervises work in Nebraska and Iowa (both Northern and Southern Districts). In each of these offices there are supervisory agents who coordinate the efforts of special agents in the field. The latter conduct the actual investigations of civil rights violations.[1]

The Kansas City office's civil rights program is managed by a supervisory special agent assisted by two other supervisory special agents, each of whom is responsible for work in one of the district court regions. The St. Louis office program is managed by one supervisory special agent. The Omaha office program is managed by one supervisory special agent who is assisted by another supervisory special agent in the agency's Des Moines office.[2]

The responsibilities of the FBI, unchanged since 1980, are to investigate allegations of violations of:

Title 18, U.S. Code (USC), Sections 241, 242, 245 (Civil Rights Act, 1968), Title 42, Section 1973 (Voting Rights Act, 1965), and Overseas Citizens Voting Rights Act of 1975. Related statutes, Title 18, Section 243—Exclusion of Jurors on Account of Race, or Color; Title 18, Section 244—Discrimination Against Person Wearing Uniform of Armed Forces.

United States Constitution, 13th Amendment; Title 18, USC, Section 1581–1588.

Public Law 88-352—Civil Rights Act of 1964 (Title 42, Section 2000), Title 18, USC, Section 245, Public Law 92-261—Equal Employment Opportunity Act of 1972, effective 3/24/72.

Title 42, USC, Sections 3601–3619, 3631, effective 4/11/68. (Sections 3602, 3603, 3604, 3605, 3606, 3607, 3613 and 3617 codify Sections 802, 803, 804, 805, 806, 807, 813, and 817 of Title VIII, Public Law 90-284, respectively and Section 3631 codifies Section 901, Title IX, of that statute.

Title 5, USC, Section 552a(i)(1), (2), and (3), as codified from Public Law 93-579 dated 12/31/74.[3]

In addition, there have been a variety of noninvestigatory activities. The FBI regularly conducts detailed civil rights lectures for command-level local officers attending its Quantico, Virginia, training facility. And the divisional offices conduct civil rights schools at local law enforcement training academies. Local offices also attempt to stimulate greater public awareness of the civil rights laws and the FBI's role in their enforcement.[4]

During 1980 each of the division offices estimates that about two "direct agent years" were spent on

[1] Robert B. Davenport, Special Agent in Charge, Kansas City District Office, FBI, letter to staff, Dec. 17, 1982; Glenn L. Young, Special Agent in Charge, St. Louis District Office, letter to staff, Mar. 30, 1983; Herbert H. Hawkins, Jr., Special Agent in Charge, Omaha District Office, letter to staff, Mar. 21, 1983; Robert B. Davenport, letter to staff, Mar. 25, 1983 (these letters are hereafter cited collectively as FBI Letters).

[2] Ibid.

[3] Ibid.

[4] Robert B. Davenport, letter to staff, Mar. 25, 1983.

civil rights activities (Omaha used 2.5), including the activities of both supervisory and special agents. (Each direct agent year is equal to 2,315 hours of investigative activity). During 1983, the St. Louis and Omaha offices anticipate they will utilize only one direct agent year for civil rights investigations because of reduction in the number of complaints received.[5]

During 1980, 579 civil rights matters were investigated by the three offices in the States of Iowa, Kansas, Missouri or Nebraska. The reports were furnished to the Civil Rights Division of the Justice Department for a determination as to whether or not further Federal action was warranted. One indictment was returned and one conviction obtained.[6]

The work of the FBI was not reviewed by the Commission in its civil rights enforcement effort studies.

[5] FBI Letters.
[6] Oliver B. Revell, Assistant Director, Criminal Investigation Division, FBI, letter to staff, Mar. 23, 1983.

7. Department of Health and Human Services

The civil rights responsibilities of the Department of Health and Human Services are administered by its Office for Civil Rights. This office has a regional office in Kansas City that serves Region VII. It includes an Office of the Director with three professionals and one clerical, an investigative staff of 10 professionals and two clericals, and a Chief Regional Civil Rights Attorney and one clerical.[1] This represents a substantial reduction in resources from 1980 when (immediately following the division of the Department of Health, Education and Welfare) the Office for Civil Rights had 24 full-time employees.[2]

The Office for Civil Rights (OCR) enforces Federal prohibitions of discrimination in programs funded by the department. These laws are:

—Title VI of the Civil Rights Act of 1964. Prohibits race, color, and national origin discrimination.

—Section 504 of the Rehabilitation Act of 1973. Bans discrimination based on mental or physical handicap.

—Title IX of the Education Amendments of 1972, which prohibits sex discrimination in federally assisted education programs.

—Title VII and Title VIII of the Public Health Service act. Bars sex discrimination in admissions to health training programs.

—Age Discrimination Act of 1975. Prohibits discrimination because of age (excluding employment).

—Hill-Burton Community Service Assurance. Under the Hill-Burton Act, a hospital or other health care facility assisted under the Act must provide services to persons residing in the community without discrimination based on race, color, national origin, or method of payment. Hill-Burton hospitals may not refuse emergency services because of a person's inability to pay.[3]

The agency reviews services provided by community mental health centers, day care centers, adoption agencies, family planning centers, welfare offices, hospitals, nursing homes and other social service programs that receive Federal funds.[4]

The universe subject to OCR's jurisdiction varies depending on the funding legislation. There are 647 hospitals certified for Medicare/Medicaid in the region which provide a total of 75,635 beds. Some of these hospitals also are subject to the provisions of the Hill-Burton Act—230 hospitals are required to provide both community services and uncompensated care, 147 are obligated to provide community service only. There are 1,512 skilled or intermediate care nursing facilities with a total of 119,816 beds that receive Medicare/Medicaid funds. Of these, 34 are obligated to provide community services and uncompensated care and six are required to provide

[1] Lorenzo Cervantes, Program Analyst, OCR, telephone interview, Apr. 13, 1983.

[2] Lois Carter, Acting Regional Director, OCR, letter to staff, Apr. 14, 1983 (hereafter cited as OCR Letter).

[3] Department of Health and Human Services, Office for Civil Rights, *Fact Sheet* (n.d.).

[4] Ibid.

only community services under the provisions of the Hill-Burton Act. As of September 29, 1982 there were 303 public or private providers of home health care. The department also has oversight authority over State health and human related services agencies. These in turn make grants to numerous other agencies. The agencies subject to review are: in Iowa—the Department of Health, the Department of Social Services, the Commission on Aging, the Commission for the Blind, the Mental Health Authority and the Department of Substance Abuse; in Kansas—the Department of Social and Rehabilitative Services and the Department of Health and Environment; in Missouri—the Departments of Social Services and Mental Health; in Nebraska—the Department of Public Welfare, the Department of Health and the Commission on Aging.[5]

The only significant change in the Office's mandate arises from Pub.L. 97-35 that increased responsibility of States for compliance with nondiscrimination requirements in federally-funded programs under the new block grants.[6] While these reduced departmental responsibility for funding arrangements, they did not reduce responsibility for enforcement of nondiscrimination requirements which remain unaltered.[7]

The U.S. Commission on Civil Rights reviewed the activities of OCR's predecessor, the Health and Social Services Branch of HEW's OCR, in 1974. At that time it was highly critical of the efforts to ensure nondiscrimination in health and human services programs. The Commission stated that the procedures used to determine compliance by State agencies or providers with the various nondiscrimination rules were inadequate and ineffective. It was particularly dissatisfied with the quantity and quality of reviews being conducted, the willingness of HEW to accept inadequate commitments to remedy deficiencies noted and a general failure to notice many deficiencies even when these were self-evident from paper in agency files. It was also dissatisfied with agency measures to ensure that State agencies with enforcement responsibilities had appropriate staff, procedures and practices to uncover discrimination and enforce remedies.[8]

In 1980 OCR received and processed 50 complaints and conducted 12 compliance reviews in all States except Missouri. For the period 1979-1982 it processed a total of 125 complaints and conducted 42 reviews. In addition, it conducted 137 pre-grant reviews. Its Regional Technical Assistance Staff made contact with 107 persons or agencies in 1980, 67 in 1981 and 517 in 1982. It should be noted that 1980 was the high point of agency activity in processing complaints or compliance reviews. The numbers declined significantly in subsequent years.[9] Although there were 50 complaint investigations in 1980, these covered only 31 different facilities-two private agencies, 10 hospitals, three care facilities, 14 State or local government agencies (other than hospitals) and two private companies. Ten additional hospitals were the subjects of compliance reviews. In 1980 OCR investigated 14 of 25 Missouri complaints.[10]

In 1983 the regional office planned to close 15 complaints following investigation, close 31 complaints without investigation, conduct 108 pre-grant reviews, eight compliance reviews and 12 project closure reviews. It also proposed to conduct 12 significant outreach efforts. OCR noted: "Project reviews will examine a narrowly defined issue (or issues) and will involve very specific sections or subsections of a regulation. These reviews will be similar to the compliance reviews carried out by this office in the past but will be much narrower in scope."[11] The outreach efforts are to include provision of information and technical assistance to protected groups and recipients.[12]

There were 2,475 private or public agencies or departments subject to direct OCR review (in addition, subgrantees of State agencies would also be subject to review but no estimate of the number of these was available). At the proposed rate of 174 contacts, assuming each was with a different agency or institution and there were no duplications from year to year, it would take OCR about 14 years to review its known universe. If account is taken that

[5] OCR Letter.
[6] OCR Letter.
[7] See: Missouri Advisory Committee, *State and Federal Civil Rights Enforcement in Missouri—Nondiscrimination in the New Health and Human Services Block Grant Programs* (October 1982), pp. 5-9.
[8] U.S. Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort—1974: To Extend Federal Financial Assistance* (November 1975), pp. 109-209; 763-767.
[9] Lois Carter, Acting Regional Director, OCR, letter to staff, Apr. 4, 1983.
[10] Missouri Advisory Committee, *State and Federal Civil Rights Enforcemen: in Missouri. . .*, p. 7.
[11] OCR Letter.
[12] Ibid.

only about 60 percent of each year's investigations cover separate institutions or agencies it would take about 25 years. The effect if all recipients, direct and indirect, are included is unknown. Given the pattern of reduced staffing and resources available to the office, this time frame might well be extended as future cuts occur. In short, OCR has not been allocated the resources necessary for it to do its job in a timely fashion, quite aside from any technical complaints about the job it does.

8. Department of Housing and Urban Development (HUD)

HUD is responsible for enforcement of Federal fair housing laws, including Title VIII of the 1968 Civil Rights Act, and assuring nondiscrimination in the various HUD-funded grants and loans for housing and urban development. These grants and loans are awarded both to other government agencies and private individuals or corporations. In Region VII this is primarily the responsibility of the Regional Office of Fair Housing and Equal Opportunity located in Kansas City and Area Offices of Fair Housing and Equal Opportunity located in Kansas City, St. Louis and Omaha.

In 1980 the Regional Office of Fair Housing and Equal Opportunity (FH&EO) had four principal units: Title VI Branch, Title VIII Branch, Systemic Branch and Management Liaison. There were 16 professionals and five clericals. At the start of FY 1983 there were two fewer professionals.[1]

The responsibilities of the department include:

—Title VIII of the Civil Rights Act of 1968 to ensure nondiscrimination in housing on the basis of race, color, religion, sex, or national origin. This includes responsibility for affirmative fair housing activities.

—Title VI of the Civil Rights Act of 1964 to ensure equal opportunity to participate in and benefit from HUD-funded activities without regard to race, color, or national origin.

—Section 3 of the Housing and Urban Development Act of 1968 to ensure the employment and training of lower-income project area residents, and participation in HUD-assisted projects by small business concerns located in or owned in substantial part by project area residents.

—Section 109 of Title I of the Housing and Community Development Act of 1974 to ensure that no person shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this Title.

—Executive Order 11063 to prevent discrimination on the basis of race, color, creed, or national origin, in housing and related facilities owned or operated by the Federal government or provided by special financial assistance and related lending practices of lending institutions.

—Executive Order 11478 to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, or national origin, and to promote the full realization of equal opportunity through a continuing affirmative action program. Public Law 93-259 extends coverage of the Age Discrimination in Employment Act of 1967 to include Federal employees. The Civil Service Commission has adopted regulations requiring agencies to process complaints alleging discrimination based on physical or mental handicaps.

—Executive Order 11625 to promote Minority Business Enterprise in HUD-related activities.

[1] See: Missouri Advisory Committee, *Fair Housing Enforcement in St. Louis* (February 1982), p. 16 and Gerald F. Simpson, Regional Administrator, HUD, letter to staff, Dec. 27, 1982 (hereafter cited as HUD Letter).

—Equal Employment Opportunity Contract Clause to ensure nondiscrimination in employment by any agency receiving grants or loans from HUD on the basis of race, color, creed, national origin, or sex.[2]

Although FH&EO has primary responsibility for civil rights enforcement, there are other units that also have civil rights functions: the Neighborhood and Consumer affairs Officer who deals with social and economic well being of residents of HUD-assisted housing or persons affected by other HUD programs, the Office of Regional Housing which administers HUD's housing grants, the Office of Regional Community Planning and Development which administers community development program funds.[3] But these civil rights responsibilities are only alluded to in the field manual; they are never made explicit. The Director of FH&EO reports to the Regional Administrator.[4] But he may also report apparent noncompliance to FH&EO headquarters.[5] In addition, there are also area offices of fair housing and equal opportunity.[6]

The region served by Region VII includes Iowa, Kansas, Missouri and Nebraska. In the four States there are a variety of agencies subject to HUD's civil rights reviews. These include three States, 25 large cities and 100 small cities that have received block grants as well as 41 recipients of urban development action grants. There are also 354 public housing authorities that participate in a variety of Federal programs.[7]

The Commission was very critical of HUD's civil rights compliance efforts in its 1979 report, *The Federal Fair Housing Enforcement Effort.* The Commission stated:

—HUD has failed to issue Title VIII regulations which sufficiently describe what constitutes prohibited housing discrimination by lenders, real estate brokers, appraisers, local governments, and other entities or organizations which affect the supply and availability of housing.

—HUD's program for securing the voluntary compliance of the real estate industry with Title VIII has not been effective in facilitating fair housing since voluntary agreements often contain commitments to do less than the law requires. In addition, HUD has not regularly monitored compliance with these agreements.

—In the past few years, HUD conducted only one communitywide pattern and practice investigation, although in 1974 this Commission noted that conducting 50 such reviews in the next year was essential for meaningful Title VIII implementation.

—HUD's delays in complaint processing and its failure to use "testing" have curtailed the Department's ability to corroborate complainants' allegations of discrimination.

—HUD has not been forceful in ensuring compliance with these requirements by its program participants:

HUD has established equal opportunity requirements, such as affirmative marketing plans, equal opportunity housing plans, and broker certifications, for many of its program participants, but it has not regularly monitored compliance with these requirements.

HUD has conducted too few compliance reviews of recipients of HUD assistance. In fiscal year 1977, 21 percent of all compliance reviews of recipients focused on private sponsors and owners, representing less than one percent of these participants in HUD programs. Fifty-six percent of HUD's compliance reviews focused on local public housing authorities, representing only three percent of these participants.

HUD has not required prompt correction of noncompliance discovered through compliance reviews. It has been unwilling to terminate grant recipients upon a finding of civil rights violations but instead has typically continued to carry out protracted negotiations beyond the 60-day limitation provided for in Departmental regulations.

—HUD's overall administration of the block grant program has not adequately protected minority and female rights.

Monitoring of block grant requirements, including civil rights requirements, has been inadequate. Recently revised regulations dictate that only communities which plan to use less than 75 percent of their block grant funds to benefit low-and moderate-income persons will be subjected to substantive preaward reviews.

HUD's regulations do not require communities to undertake specific actions to address the special housing and community development needs of minority and female-headed households.

As of the fourth year of the program, HUD has never disapproved a community's application because of civil rights violations, but instead has allowed such violations to continue uncorrected.

[2] HUD, *HUD Handbook* 1170.1 Rev.-3, Chg 1 (May 30, 1979), pp. 5-1 and 5-2.
[3] Ibid.
[4] *HUD Handbook*, 1170.1 Rev.-3, Chg. 1, p. 5-2.
[5] Ibid., p. 5-4.
[6] For a discussion of these see: Missouri Advisory Committee, *Fair Housing Enforcement in St. Louis*, pp. 30-33.
[7] HUD, Director of Public Housing Authorities (March 1979) and Computer File, HUD Regional Office. The number of small cities grants is currently dropping so there will be fewer of them in the future.

HUD's staffing patterns, budget allocations, and organizational structure reflect the low priority which has been accorded to HUD's administration of Title VIII. In fiscal year 1978, HUD's administration used little more than 70 staff years for Title VIII duties in the regions, where most HUD Title VIII compliance activities take place, and will have allocated only $5.8 million for Title VII activities in all HUD offices. These resources have not been adequate for HUD to carry out such activities as communitywide pattern and practice reviews and a comprehensive program of leadership and guidance for other Federal agencies with Title VIII responsibilities.[8]

The involvement of HUD's regional office in complaint processing and both St. Louis area and regional office in compliance reviewing was studied by the Missouri Advisory Committee in its February 1982 report, *Fair Housing Enforcement in St. Louis.* The Advisory Committee noted that some HUD officials expressed reservations about the effectiveness of their own complaint processing mechanism. The Committee also noted that the affirmative fair marketing plans on file failed to document a clear pattern of compliance with agreed goals.[9]

Generally, the region met or exceeded the objectives set for it in compliance activities in FY 1980. It was to have no more than 30 percent of its complaints under Title VIII on hand for 60 or more days. In fact 34 percent were on hand.[10] It achieved more than its goals of conducting 25 Title VIII compliance reviews of executed conciliation agreements and 60 affirmative fair housing marketing plans.[11] It had an annual goal of conciliating 30 percent of its investigations and actually conciliated 34 percent. It had a goal of successfully conciliating 80 percent of all conciliations attempted and achieved 61 percent but this was above the average. It closed 89 percent of its Title VIII complaints compared to a national goal of 75 percent. It had a goal of processing complaints in an average of 150 days. It achieved 132 days average processing time. It had a goal of completing 46 Title VI/Sec. 109 reviews and met it. It had a goal of nine Title VI-Funded Agencies reviews and met that. It had a goal of 11 reviews of community development block grant recipients with more than 100,000 population and met it. It had a goal of reviewing 35 recipients with civil rights problems and actually reviewed 40. It had a goal of monitoring 91 entitlement grantees and actually monitored 92. It had a goal of monitoring 125 small cities grantees and actually monitored 133. It had goals of evaluating 17 affirmative fair housing marketing goals, organizing eight community housing resources boards and establishing four new horizon fair housing assistance strategies and met them. It had a goal of monitoring 72 equal opportunity housing plans and actually monitored 82.[12]

The regional office did not (as of February 1983) have an approved set of goals for FY 1983. It had lost two permanent full-time staff persons compared to what it had in 1982 when last reviewed by the Missouri Advisory Committee.[13] However, it stated that "budget cuts have not resulted in a reduction of its enforcement effort."[14]

[8] U.S. Commission on Civil Rights, *The Federal Fair Housing Enforcement Effort* (March 1979), pp. 5–6. HUD commented:

> The Department is not authorized to use testers in the complaint processing of housing discrimination complaints. Further, the Department's guidance for investigations of such complaints has resulted in the gathering of evidence to support determinations made. (Gerald F. Simpson, letter to staff, Mar. 25, 1983)

[9] Missouri Advisory Committee, *Fair Housing Enforcement in St. Louis* (February 1982), pp. 64–65.

[10] HUD Letter.

[11] Ibid.

[12] Ibid.

[13] Ibid. and Missouri Advisory Committee, *Fair Housing Enforcement in St. Louis,* p. 29.

[14] HUD Letter.

9. Department of Labor

Between 1980 and 1983 there were considerable changes in the organizational structure of civil rights compliance efforts in the regional office of the Department of Labor. During 1980 a special review unit included two equal opportunity specialists, one monitor advocate and one manpower development specialist who worked on civil rights issues. In 1981 the regions established civil rights units located in the Office of Administration. This included a regional director of the civil rights office and two equal opportunity specialists.[1] The new unit assumed responsibilities not only for external compliance with Federal laws and regulations prohibiting discrimination but also (in 1982) for the internal affirmative action program. It did not receive additional staffing for this function.[2] The following is a summary of the powers and duties regarding external programs administered in the region:

A. FY 80.

The Equal Opportunity and Special Review Staff of Employment and Training Administration's (ETA) Region VII office was responsible for enforcing the following statutes and regulations of DOL-ETA funded programs:

—Title VI of the Civil Rights Act of 1964 as amended, 42 USC, Sec. 2000d–2000d–4 (29 CFR Part 31).

—Section 504 of the Rehabiliation Act of 1973 as amended, 29 USC, Sec. 794, *et seq.* (29 CFR Part 32).

—Age Discrimination Act of 1975 as amended, 42 USC, Sec. 6101–6107.

—Section 132 of the Comprehensive Employment and Training Act Amendment of 1978 (CETA) as amended, 29 USC, Sec. 801, *et seq.* (29 CFR Part 676, Subpart D).

—20 CFR Part 658, Subpart E (Job Service System).

—29 CFR Part 56, Subpart D (WIN Program funded under Social Security Act).

—Title IX of the Educational Amendments of 1972.

ETA's Equal Opportunity and Special Review Staff evaluated ETA's federally-funded programs for compliance with the above statutes through complaint investigations and compliance reviews. Determinations were made for programs found in noncompliance requiring corrective actions, remedies and/or sanctions after concurrence by Regional Solicitors Office. Determinations were appealable to the Administrative Law Judge and/or Secretary of Labor for a final decision by the Department of Labor.

The Bureau of Apprenticeship and Training had the authority, as the result of a compliance review where it is determined that there is reasonable cause to believe that an apprenticeship program is not operating in accordance with Equal Employment Opportunity in Apprenticeship Training (29 CFR Part 30) and voluntary corrective action has

[1] Robert Gatewood, Director, Office of Civil Rights, U.S. Department of Labor, Region VII, letter to staff, Jan. 31, 1983 (hereafter cited as DOL Letter).

[2] Ibid.

not been taken by the program sponsor, to institute proceedings to deregister the program.

B. FY 83.

In accordance with Secretary's Order 2-81, dated June 1, 1981, effective September 6, 1981, Regional Office of the Assistant Secretary for Administration and Management/Office for Civil Rights (OASAM/OCR) became the field office for enforcing equal opportunity in programs and activities receiving or benefiting from financial assistance from DOL as administered by DOL regional agencies, ETA, Job Corps, and Occupational Safety and Health Administration (OSHA). Through complaint investigations, and pre-award and post-award compliance reviews, OASAM/OCR has the authority to issue determinations on whether DOL programs receiving Federal financial assistance are in compliance with applicable laws, rules, and regulations. . . . When OASAM/OCR finds there is probable cause to believe a recipient of financial assistance is not in compliance with applicable civil rights/antidiscrimination regulations, it has the authority to recommend corrective actions, remedies, and sanctions against the recipient after concurrence by the Regional Solicitors Office. Decisions made by OASAM/OCR are appealable in accordance with DOL procedures to the Administrative Law Judge and/or Secretary of Labor. . .OASAM/OCR has the authority to informally resolve complaints from DOL employees and applicants for employment. Regional OCR staff has investigative authority for formal complaints against the department as assigned by their national office. Complaint decisions are made by the Assistant Secretary of OASAM. Therefore, OCR is responsible for civil rights enforcement for all grantees (staff and participants), as well as DOL employees and applicants. The OASAM/OCR's Civil Rights/Antidiscrimination duties also include training and technical assistance for DOL agencies and recipients of financial assistance when requested or needed. It maintains liaison with Federal, State, local, public and private agencies and community organizations concerned with EEO and compliance activities.

The duties of the Bureau of Apprenticeship and Training in implementing antidiscrimination equal opportunity in Apprenticeship Training continue as in FY 80.[3]

The universe subject to review by the regional civil rights office includes programs in Iowa, Kansas, Missouri and Nebraska: 25 Comprehensive Employment and Training Act prime sponsors, five Job Corps Centers, four State Employment Service Systems (that include 204 job service local offices and 80 full service unemployment insurance claims operations) and seven "new directions" grant projects awarded by the Occupational Safety and Health Administration.[4]

The U.S. Commission on Civil Rights last reviewed Department of Labor activities in its 1977 report, *The Federal Civil Rights Enforcement Effort—1977: To Eliminate Employment Discrimination: A Sequel.* It had earlier reviewed the department's activities in its July 1975 and November 1975 studies of the Federal civil rights enforcement effort.[5] These reviews were of activities of the Office of Federal Contract Compliance Programs, the Wage and Hour Division's enforcement of the Equal Pay Act and the then Manpower Administration's work with State Employment Services and Comprehensive Employment and Training Act programs. In this chapter we do not review the work of the Office of Federal Contract Compliance Programs (OFCCP). A separate request for information about OFCCP activities received no response.

In its 1975 study of the enforcement of the Equal Pay Act, the Commission found that there had been decentralization of administration to regional level but that this had created administrative problems including lack of overall control by the Wage and Hour Division of review efforts; inadequate monitoring of regional enforcement, lack of a national enforcement program; the number of compliance officers was insufficient; the guidelines were inadequate; compliance reviews were insufficient bases for litigation; the department's compliance staff

[3] Ibid.

[4] Ibid.

[5] U.S. Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort—1974: Vol. V To Eliminate Employment Discrimination* (July 1975); *The Federal Civil Rights Enforcement Effort—1974: Vol. VI To Extend Federal Financial Assistance* (November 1975).

failed to coordinate their work with that of other agencies with similar jurisdiction.[6] Regarding field operations, the Commission noted that real control rested with the Assistant Regional Director for Employment Standards and an Associate Assistant Regional Director for Wage and Hour. About 10 percent of compliance staff time was spent on equal pay questions. The Commission thought the then level of staffing insufficient and made a number of substantive recommendations. Similar findings were made in 1977.[7] However, responsibility for equal pay matters have been transferred entirely to EEOC under a 1980 reorganization and thus are of no concern in this study.

The department continues to have responsibility for the operation of the State employment services and for employment and training programs (although these are now in flux). In 1975 the Commission noted that these were the responsibility of what was then called the Manpower Administration, now renamed the Employment and Training Administration. The Commission noted that a departmental directive prohibiting sex discrimination in such programs had expired without renewal; the department's regulations on Title VI were inadequate. Program sponsors with histories of discriminatory practices were allowed to receive funding under the Comprehensive Employment and Training Act; neither the Division of Equal Employment Opportunity in headquarters nor the Equal Employment Opportunity Representatives in the field had authority sufficient to execute their responsibilities; State employment services were instructed to establish the post of Minority Group Representative to check on Title VI compliance but their duties were never specified, in some States they were not functioning; the number of compliance reviews conducted was too low; no effort had been made to increase utilization of minorities and women on employment service staffs; the rural manpower services programs were replete with discriminatory practices; civil rights violations in all departmentally funded programs were not corrected on a timely basis and when agreements were reached compliance was not verified.[8] The Commission noted that the department had civil rights responsibilities under the Wagner-Peyser Act (20 CFR sec. 600, *et seq.* (1974); Title VI and VII of the 1964 Civil Rights Act, as amended; and under the Comprehensive Employment and Training Act. It noted that compliance officers could not communicate directly with their headquarters but had to pass reports through intermediate regional officials who lacked any special expertise in civil rights. In 1975 the Commission noted with concern apparently uncorrected patterns of discrimination in State and rural employment service programs.[9] These activities were not reviewed by the Commission in 1977.

During 1980 the various regional civil rights units in Region VII of the Department of Labor investigated 12 complaints against CETA prime sponsors or State employment services, conducted desk reviews of 21 grant applicants and four employment service budget programs and provided technical assistance on 180 occasions for unspecified durations.[10] In 1983, the civil rights office proposed to review one job corps site, two unemployment insurance and two employment security offices; conduct pre-award reviews on two job corps contracts and four employment security budgets; and, provide on-site technical assistance in all four States.[11] The agency noted that "budget cuts and reduced OCR staff have curtailed OCR training opportunities, conference attendance, and on-site compliance reviews" but that this had not affected its complaint handling efforts.[12]

It would appear that OCR proposes to review only a very small portion of the State employment service facilities, although in the past the Commission has noted these have had civil rights problems. It is not clear what resources will be available for reviews of the new block grant or other employment programs that might be established. It is clear that if only current resources are available these will be insufficient to monitor civil rights compliance in these new programs. Indeed, the absence of ability to conduct on-site reviews may constitute a fatal deficiency in the civil rights compliance efforts of the Department.

[6] U.S. Commission on Civil Rights, *Federal Civil Rights Enforcement Effort—1974*, Vol. V, pp. 638, 642.
[7] U.S. Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort—1977*, pp. 144–175.
[8] U.S. Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort—1974, Vol. VI*, pp. 778–783.
[9] Ibid., pp. 394–464.
[10] DOL Letter.
[11] Ibid., attachment.
[12] DOL Letter.

10. Department of Transportation

Federal Aviation Administration

Federal Aviation Administration civil rights enforcement efforts in Region VII are administered by the civil rights staff of the Kansas City regional office. Both in 1980 and 1983, the regional civil rights staff included four persons: a civil rights officer, two equal employment specialists and one secretary.[1]

The external functions of this unit have remained essentially unchanged. They are:

Consistent with national civil rights and equal opportunity policies, programs and standards and procedures, develops and recommends to the regional director implementing regional policies and programs, and develops and, as authorized issues implementing standards and procedures to assure:

—equal opportunity in the employment practice of regional contractors, subcontractors, including material suppliers, and related organizations, such as labor unions (Civil Rights Act of 1964, Executive Order 11246 as amended, and regulations of the Department of Labor and the Department of Justice);

—equal opportunity by recipients of FAA sponsored Federal assistance and related organizations within the region (Civil Rights Act of 1964, Executive Order 11246 as amended, and regulations of the Department of Labor and the Department of Justice);

—that all regional programs and activities affecting housing and urban development are administered in an affirmative manner to further the purpose of the Fair Housing provision of Title VIII of the Civil Rights Act of 1968;

—that investigations of alleged or suspected discriminatory practices as well as compliance reviews are conducted by, or are guided by, civil rights specialists regularly assigned to the Civil Rights Staff;

—that technical advice and guidance on civil rights matters are provided to regional officials and organizations regularly charged with contract and grant-in-aid administration.[2]

The office:

—Evaluates implementation by regional elements of approved civil rights and equal opportunity policies, programs, standards and procedures.

—Serves as the Regional Contract Compliance Officer (Executive Order 11246 as amended and regulations of the Department of Labor).

—Serves as the Regional Title VI Coordinator (Title VI of the Civil Rights Act of 1964, Executive Order 11246, and regulations of the Department of Justice).

—Provides for, or conducts in-depth equal opportunity compliance reviews (1) deemed necessary to assure effective program implementation within the region and (2) requested by higher authority; and conducts such reviews related to contracting activities of regional elements.

—Develops or coordinates the development of all regional civil rights and equal opportunity reports and the regional

[1] Murray E. Smith, Director, Central Region, Federal Aviation Administration, letter to staff, Dec. 10, 1982 (hereafter cited as FAA Letter).

[2] Ibid.

input for all national civil rights and equal opportunity reports.[3]

The civil rights unit is one of 12 that report directly to the regional administrator and five connected to his immediate staff.[4]

Of five objectives for 1980, only one was connected to matters other than internal personnel. This was to promote the use of minority businesses by FAA or by FAA assisted recipients. The civil rights unit reported that it had increased contracts to minority-owned suppliers to 13 percent of FY 1980 procurement. Other efforts, such as involvement with Office of Minority Business Enterprise (OMBE) grants and efforts to increase utilization of minority businesses were reported as continuing but no details were provided in the semi-annual accomplishment report for the second half of FY 1980.[5]

The agency stated that:

> Federal Aviation Administration regulations prioritize airports into four categories, in accordance with their traffic volume. Category no. 1 specifies target areas for annual on-site reviews; the Central Region annual reviews are St. Louis and Kansas City, Missouri. Category no. 2 specifies areas for biannual on-site reviews (Omaha), and Category no. 3 specifies areas for tri-annual reviews (Des Moines). Category no. 4 specifies areas for desk audit reviews on an annual basis relative to all other obligated airports.
>
> Our agency review of Title VI disclosures pinpointed a conspicuous lack of discrimination findings. Consequently, emphasis has been shifted to more active implementation of the Department of Transportation's Minority Business Enterprise program in the region. Two specialists are assigned the responsibility of monitoring the Minority Business Enterprise (MBE) program for the four States in accordance with DOT regulations. The MBE requirements for the specified airports are monitored and implemented by the Civil Rights Staff.[6]

In 1983 the unit had seven objectives, two of which related to the external program. It proposed to conduct Title VI of the Civil Rights Act compliance reviews at three airports: Kansas City, St. Louis and Des Moines. In these cities it also proposed to review airport leases to promote the awarding of concessions to minority and women-owned business; review the awarding of contracts to determine the percentage of minority or women-owned suppliers and contractors; try to increase FAA utilization of minority or women-owned contractors to 16 percent of procurement and increase utilization of contractors through the Regional Minority Business Opportunity Committee.[7] When set against the universe of airports in the region: over 50 airports including 15 primary airports, seven reliever, 12 general aviation and 13 commercial service that received grants in FY 1982, this does not seem to be a substantial effort.

The agency notes that:

> When regulation 49 CFR Part 23 was issued, the FAA Office of Civil Rights authorized one staff position per region to implement the Minority Business Enterprise (MBE) Program. However, budgetary and staffing curtailments precluded regions from gaining additional Civil Rights Staff personnel. This regulation set forth a multifaceted, complex program involving coordination with airport sponsors, reviews of proposed plans, follow-up regarding sponsor goals, etc.). The reduction of resources has minimized the in-depth monitoring of the regional MBE program. Consequently, the monitoring and follow-up activities pursuant to an effective implementation of this program have been drastically curtailed. The staff relies primarily on telephonic communications to provide guidance and direction to the regional MBE program.[8]

It further stated that: "FAA utilization of minority/women contractors, along with the awarding of concessions to minority and women-owned businesses has gradually increased in the region under the aegis of the Civil Rights Office."[9]

The civil rights unit, in addition to its external responsibilities, must process civil rights grievances for the regional staff of 2,543, prepare affirmative action planning documents, and take the lead in their implementation. It is not surprising then, that a staff of three professionals could hardly do much to supervise compliance with the Civil Rights Acts or encourage utilization of minorities and women by contractors or grant-recipients. It is clear that the unit will be reviewing the activities of the two largest airports in the region. But many of the medium-size airports will not be reached even though their contracting activities and hiring might, in aggregate, by equally significant. In fact, if the unit reviewed three of 15 primary airports each year, it would take five years to review all the primary airports alone. By then it would be time to begin again and the remaining airports might never be

[3] Ibid.
[4] Ibid., attachment.
[5] Ibid., attachment.
[6] Murray E. Smith, letter to staff, Apr. 8, 1983.
[7] FAA Letter.
[8] FAA Letter.
[9] Murray E. Smith, letter to staff, Apr. 8, 1983.

reached. The FAA civil rights unit's activities proposals and reports suggest that at least some of its mandated functions go unperformed due to lack of resources. In short, it is clear that FAA's civil rights unit lacks what is necessary to reasonably review compliance with the civil rights requirements and perform essential MBE/WBE outreach efforts.

Federal Highway Administration (FHWA)

The Federal Highway Administration's external enforcement program in Region VII is administered by regional Office of Civil Rights staff who are assisted by divisional staff.[10]

Currently, the Region VII civil rights staff includes two professionals, a shared clerical and some other shared personnel. Its primary duties are to administer the contract compliance program, minority banking program, external youth opportunity program, external training and supportive services program, Title VIII, Title VI (1964 Civil Rights Act), Internal/External Program of State Highway Departments (1968 Highway Act), Minority Business Enterprise Program.[11] But in addition it also has full responsibility for the various internal agency affirmative action and equal opportunity programs.[12] In 1983 they administered nearly $600 million in highway funds.[13]

The regional Office of Civil Rights is one of six units that report directly to the regional administrator. Its director is "principal staff advisor to the Regional Administrator on all internal and external civil rights matters."[14] In addition to advising the regional administrator, the director also advises the various regional unit executives on civil rights problems in their jurisdictions.[15]

In addition to the regional office, there are divisional offices of FHWA in each of the four States. These offices spend approximately 44 person-weeks each year on civil rights matters. Each Division Administrator is responsible for ensuring that the States they monitor conduct the scheduled compliance reviews and evaluates data supplied by the State Highway Department they supervise. The Division Administrator may reject bids submitted by the State for approval for failure to satisfy either equal opportunity or minority business regulations. In a typical year the divisions have threatened to withhold bid approval or actually withheld it for noncompliance with the equal opportunity regulations about 50 times in Iowa, 4 times in Kansas, 10 times in Missouri and 4 times in Nebraska. The divisions have withheld or threatened to withhold bid approval for noncompliance with the minority business enterprise regulations about 6 times in Iowa, about 8 times in Kansas, about 10 times in Missouri and about 4 times in Nebraska.[16]

In 1975 the U.S. Commission on Civil Rights was very critical of the civil rights efforts of the Federal Highway Administration. It noted that FHWA was responsible for administering Title VI, the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 (which requires that dwellings for displaced persons be open to all regardless of race, color, religion, sex, national origin), Section 136(b) of the Federal-Aid Highway Act of 1970 which requires full consideration of possible adverse economic, social and environmental effects in the development of federally-aided roads. It noted that "although the requirements give FHWA responsibility to ensure that federally-aided highways do not increase or accelerate the racial polarization of urban areas, the Department of Transportation has continually denied that it has such responsibilities."[17] It had similarly failed to prohibit discrimination on the basis of sex although it had acquired statutory authority to do so.[18] Although FHWA had reviewed the civil rights compliance posture in all 50 States, it failed to determine whether the standard appraisal procedures it accepted were equitable to minorities and women; it accepted that replacement housing was available on a nondiscriminatory basis if a State law prohibited housing discrimination and did not question the availability of particular units; the review guidelines failed to provide for collecting data to determine whether minority communities would be adversely affected by new highway construction; they failed to require investigation of the extent to which there

[10] Calvin Berge, Regional Administrator, FHWA, letter to staff, Mar. 31, 1983.

[11] Vincent O. Shields, Director, Office of Civil Rights, Federal Highway Administration, Region 7, letter to staff, Dec. 20, 1982 (hereafter cited as FHWA Letter).

[12] Ibid.

[13] Title XXIII, 1982 Surface Transportation Act (Pub.L. 97-424).

[14] FHWA Letter, attachment.

[15] Ibid.

[16] Glenn Smith, Director, Civil Rights, FHWA, telephone interview, Apr. 19, 1983.

[17] U.S. Commission on Civil Rights, *Federal Civil Rights Enforcement Effort, Vol. VI*, pp. 784-85.

[18] Ibid., pp. 785.

was equal opportunity for women in a recipient's services or employment. Insufficient demands had been made of State recipients: no standards had been set for the content of frequency of State compliance reviews, no methodology for impartial complaint investigation had been established. The Commission noted that it had been unnecessary for FHWA to use sanctions against recipients because they had accepted its recommendations but that FHWA had not fully tested the willingness of States to comply with civil rights requirements by requesting such actions as route changes and had not conducted follow-up reviews to ensure agreements for corrective action were implemented.[19]

The Commission noted that only a small portion of FHWA civil rights staff time was spent on Title VI and believed this was insufficient for the task.[20]

In 1980 the regional Office of Civil Rights had four objectives, three of which pertained to the external program. It was to seek to increase minority business enterprise participation in the highway programs in the region. To do so it conducted prequalification, bidding, licensing and award reviews of each State highway agency and found no discriminatory practices. It noted that it exceeded its assigned goal of $4.5 million in awards to minority business enterprises by $600,[illegible] reported that 52 contracts were let to 44 minority business enterprises. It was to ensure that standardized procedures developed for implementation of the contract compliance review program were applicable to current program standards. To do so management reviews were conducted on FHWA's Nebraska and Missouri Division Offices. It also conducted "consolidated compliance reviews" in the southeastern and St. Louis areas of Missouri. During the course of these reviews, the Office of Civil Rights reviewed seven contractors, noted significant deficiencies in five and obtained corrective action agreements. The Office concluded that "regionwide the contract compliance program is being implemented satisfactorily."[21] Finally, the Office was responsible for the Title VI program. Compliance reviews were conducted by the division offices. The Office noted that "deficiencies were minimal" and dealt with in negotiations during visits to the State highway departments. It noted that all four had approved Title VI programs. Although the Office of Civil Rights was supposed to assist the Office of Right-of-Way in a program review, it did not do so due to budget limitations but planned to do so in 1981.[22]

For 1983, the Office had eight activities, five of which concerned the external programs. In conjunction with the Office of Construction and Maintenance and FHWA's Kansas division office, OCR was to conduct a pre-qualification bidding and awards review in Kansas. It was to conduct management reviews in Nebraska and Missouri of their highway departments' certification of minority or women-owned business enterprises as contractors and it was to provide technical assistance to encourage utilization of minority or women-owned business enterprises. This was to take six personweeks. It was to monitor the employment activities of State highway departments by conducting evaluations in all four States, ensuring the departments maintained adequate contact with groups likely to yield minority and female employees and provide two technical assistance seminars. This was to take 11 personweeks. It was to increase the scope, quality and impact of its contract compliance reviews by conducting consolidated compliance reviews (in conjunction with the relevant division offices) in Missouri and Nebraska. It was also to conduct contract compliance program management reviews in these States to ensure implementation of on-the-job training requirements and OJT/Supportive services. These activities were to take two personweeks. In addition it was to provide a training seminar on procedures for conducting contract compliance reviews in those States. This activity was to take four personweeks. To ensure that the Title VI program requirements were being implemented consistently, it was to conduct Title VI program management reviews in the Iowa and Nebraska State highway departments and at the FHWA's division offices in those States. It was also to assist at least one program review of a metropolitan planning organization or a right-of-way phase inspection. These activities would take four personweeks. It was to provide training related to Title VI implementation for the division offices and two State highway departments it reviewed. (This was to take two personweeks.) Unspecified activities taking four personweeks were scheduled for management of the Title VIII 1968 Fair Housing program and of three

[19] Ibid., pp. 785–88.

[20] Ibid., p. 488.

[21] FHWA Letter.

[22] Ibid., attachment.

personweeks for management of the handicapped program.[23]

The scheduled activities for which specific activities were proposed would take a total of 36 personweeks. Unspecified activities would take a further several personweeks. By the most generous estimate, only about three-quarters of a personyear would be devoted to external civil rights activities. If activities that were unrelated to compliance efforts were eliminated the number would be much reduced. It could be even further reduced if activities for which no precise plans are specified were eliminated. In short, it may be that the Office of Civil Rights will spend less than a half personyear on civil rights compliance activities of States or contractors. Of course, the office had internal responsibilities as well. It should be noted that divisional activity would supplement regional office efforts.

A memorandum from the then director of OCR to the Regional Administrator shows that its travel budget had been slashed by 49 percent for the fiscal year. This clearly had an effect on the ability of the regional office to perform its duties.[24] But the regional office stated divisional offices took some of the slack.[25] The director of OCR asserted that the budget cuts had not derogated from his office's efforts.[26]

It would appear that the resources devoted to the external civil rights program were hardly commensurate with the Federal funding being distributed, estimated to be about $600 million in 1983.[27] The Missouri Advisory Committee has noted significant deficiencies in the civil rights compliance activities of just one of the four State agencies supervised by FHWA.[28] Clearly, there is scope for a significantly strengthened enforcement program. Eight years after the Commission's criticism of the FHWA program, at least in one region, staff shortages, travel, budget limitations and agency imposed limitations on compliance efforts continue to restrict what could be done to ensure complete compliance by grantees. It will be interesting to see what effect the new participation rules and the Department's determination to enforce them[29] will have on FHWA review efforts.

[23] Ibid., attachment.
[24] Ibid., attachment.
[25] Calvin Berge, letter to staff, Apr. 5, 1983.
[26] FHWA Letter.
[27] Title XXIII, 1982 Surface Transportation Act (Pub.L. 97-424).
[28] Missouri Advisory Committee, *State Contract Compliance Efforts in Missouri* (March 1983).
[29] See: *Kansas City Times*, Apr. 20, 1983.

11. Small Business Administration (SBA)

The Small Business Administration was not reviewed by the U.S. Commission on Civil Rights in its civil rights enforcement efforts studies. The agency aids, counsels and assists small businesses by providing financial assistance and assistance in obtaining Federal contracts.[1]

Civil rights compliance activities are the responsibility of the SBA's Office of Civil Rights Compliance (OCRC). The range of its activities are indicated in Table 11.1. OCRC is a central office function, part of the SBA's Office of Equal Employment Opportunity and Compliance. (OEEO&C)(That office reports to the Associate Deputy Administrator for Resource Management.) Another office of OEEO&C deals with equal employment opportunity. The headquarters office is supported by field staff in eight regional offices who report directly to it. There are no field units in Kansas City or Seattle. The four States in Region VII are divided between offices in Chicago (serving Indiana, Illinois, Wisconsin, Michigan, Minnesota, Missouri, Ohio and Iowa) and Denver (serving Colorado, North Dakota, Wyoming, South Dakota, Utah, Montana, Kansas and Nebraska).[2]

OCRC is responsible for effectuating compliance with Title VI of the 1964 Civil Rights Act, via 13 CFR 112; Regulation B of the Equal Credit Opportunity Act; Sec. 504 of the Rehabilitation Act of 1973; the Disaster Relief Act of 1974; Title VIII of the Civil Rights Act of 1968; Title IX of the Education Amendments of 1972, Sec. 4(b) of the Small Business Act, via 13 CFR 113; the Age Discrimination Act is enforced by regulations proposed as 13 CFR 117.[3]

Describing its functions SBA has stated:

> The duties of the OCRC include (1) monitoring direct and indirect recipients of SBA's financial assistance to ensure that they do not discriminate in their business, credit or employment practices or in the delivery of their services to the public, by conducting desk audits, on-site compliance reviews, and complaint investigations; (2) providing technical assistance to SBA's recipients and other members of the small business community on civil rights matters, and by disseminating information concerning other Agency programs; (3) monitoring the Agency's program offices to ensure that the Agency's officials treat all applicants courteously and do not discriminate against any person on the basis of race, color, religion, sex, marital status, age, handicap or national letters.[4]

Nationwide in 1980, OCRC was monitoring approximatedly 27,619 business loans out of 185,000 in its portfolio, of which about 900 in a portfolio of 18,000 were located in Iowa, Kansas, Missouri and Nebraska. During 1982 OCRC was monitoring 40,367 business loans in a portfolio of 200,000, of which about 1,000 in a portfolio of 19,000 were located in the four States.[5] In 1980, the national office had a staff of four professionals and three clericals, in 1982 this dropped to three professionals

[1] General Services Administration, *U.S. Government Manual* (1981), pp. 618–622.
[2] George H. Robinson, Director, Office of Equal Employment Opportunity and Compliance, letter to staff, Mar. 2, 1983 (hereafter cited as SBA Letter), Exhibit 4.
[3] SBA Letter, Exhibit 5.
[4] SBA Letter.
[5] Ibid.

and three clericals. In 1980 the staff of the Chicago OCRC office included four professionals and one permanent part-time clerk. In 1982 it had only three professionals and one clerk. In 1980 the Denver OCRC office had two professionals and one clerk. In 1982 it had two professionals and one temporary clerk.[6] Commenting on the effect of these personnel changes, the director of OEEO&C stated:

> Since FY 1980, we have lost four clerical and two professional slots. The loss of professionals resulted in a decreased number of on-site reviews being conducted during FY 1982. The loss of clericals may be as critical, since each Central Office Duty Station has only one clerical assigned, with the exception of Region III. The four offices which lost their permanent clerical staff are making do with temporary personnel; however, efficiency and continuity have suffered. In these offices, everything takes much longer to complete because of the constant training which must be engaged in by both the clerical and professional staffs. The cut in the retrieval of data for monitoring purposes coincided roughly with the loss of the six permanent staff members; consequently, the workload and the tasks had to be re-prioritized. Those tasks with less priority were dropped or accomplished at a lesser degree.[7]

SBA noted other problems too:

> Increased travel costs and decreased travel funding have resulted in our use of only one person for most investigations (previously, we used two or more people for complaint investigations), and in requiring that complaint investigations of program offices be conducted by the personnel assigned to that geographic area of responsibility. (Previously, investigations were conducted by personnel from some other area.)[8]

During this period there were significant changes in SBA's efforts to ensure compliance by its recipients with the various Federal antidiscrimination laws. The Director of SBA's Office of Equal Opportunity and Compliance stated:

> In FY 1980, we were required to increase the scope of our monitoring activities because two audits, conducted by the Department of Justice and SBA's Internal Audits staff, found that we were not monitoring all segments of our portfolio as required by the regulations. With the approval of OMB, we were to increase the number of recipients from whom we retrieved data so that we would cover the majority of SBA recipients. The data retrieved is reviewed to determine if the recipients are in compliance, have potential problems that require civil rights technical assistance, have problems that may require management assistance and to update the information in the SBA file on the recipient, i.e., address, ownership, etc. Those recipients identified as having civil rights problems or in probable noncompliance are targeted for on-site reviews. However, because of our increased monitoring and the Administration's policy to decrease the paperwork burden on the public and on recipients of Federal assistance, many complaints were received by both the Agency and the Office of Management and Budget (OMB). This resulted in a 98.4 percent cut in our paperwork burden hours by OMB for FY 1982. The cut not only restricted our data retrieval to only 1,000 businesses, but additionally prohibited us from obtaining data from small businesses that employ less than 250 employees. We have made efforts to increase the number of on-site reviews conducted, but we have been hampered by decreased travel funds and staffing.[9]

These changes were significant. Nationwide during the period Oct. 1, 1979 through Aug. 31, 1980, OCRC monitored compliance by 17,057 firms, received compliance reports from 16,171 and conducted on-site reviews on 688. It found 4,070 firms in noncompliance, although only in 27 cases was extensive negotiation required to restore compliance.[10] For 1983, the office proposed to conduct 800 on-site visits.[11]

SBA, in theory, can require compliance reports under OMB restrictions from 87 of its 200,000 recipients because these employ 250 or more persons. In fact, by doing on-site reviews they can reach more. They also maintain under review recipients who have been the subjects of earlier reviews and who were found to have problems, companies against which complaints have been filed, and companies requesting technical assistance. They target companies with employment potential, those where they have reason to believe there are civil rights problems and companies that are consolidating their workforces.[12]

SBA does not conduct pre-award reviews but it is planning to develop a system for doing so on the Small Business Investment Corporations because these serve as conduits for substantial sums of money and it would be cost effective to do so.[13]

During its on-site visits, SBA staff do offer technical assistance to counsel and train persons who

[6] Ibid., Exhibits 1 and 2.
[7] SBA Letter.
[8] SBA Letter.
[9] SBA Letter.
[10] SBA Letter, Exhibit 6.
[11] SBA Letter, Exhibit 5.
[12] Adelino Sanchez, Chief, Office of Civil Rights Compliance, telephone interview, Mar. 11, 1983.
[13] SBA Letter.

TABLE 11.1

Small Business Administration, Civil Rights Unit Functions

- Plans, directs, coordinates, and administers the civil rights compliance program of the Small Business Administration in accordance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII, Civil Rights Act of 1968, Regulation B of the Equal Credit Opportunity Act of 1974, Section 504 of the Rehabilitation Act of 1973, Section 4(b) of the Small Business Act, the Age Discrimination Act of 1975, and Disaster Relief Act of 1974, as set forth in Parts 112, 113 and 117 (proposed), of Title 13 of the Code of Federal Regulations.
- Develops and recommends policies and establishes standards and procedures to assure that SBA's civil rights activities involving compliance and field reviews are carried out.
- Provides advice and assistance to Agency officials and serves as SBA's liaison with other agencies and organizations on matters relating to civil rights compliance.
- Prepares and evaluates regular and special reports on compliance activities of the Agency.
- Refers to the Office of Inspector General those matters revealed in the course of investigative work that appear to be violations of existing statutes or regulations or which pertain to misconduct or fraud by SBA officials.
- Assures nondiscrimination in the treatment of applicants by Agency personnel through training, investigations, and necessary corrective action.
- Assures nondiscrimination on the part of recipients in their employment and business practices.
- Serves as liaison with other Federal and nonfederal agencies on matters relating to the civil rights compliance program.
- Responsible for Agency's adherence to the Guidelines of those agencies which are the lead agencies for the coordination of certain statutes.
- Develops program goals and objectives within the framework of approved policies. Reviews and evaluates program effectiveness.

Source: SBA

have civil rights responsibilities, to help formulate affirmative action plans for those engaged or about to engage in government contracting or suggest additional funding sources.[14]

OCRC staff also visit each SBA District Office to determine whether there are any unintentional discriminatory practices that might result in discrimination in providing assistance. It also scrutinizes the loanmaking practices of those district offices which generate the most complaints or where incidents of racial strife have been reported.[15]

Should there be a finding of noncompliance, SBA estimates it will take one year from a determination of noncompliance to complete the process of a Title VI hearing. It would then take a further 45 days for the Administrator to ratify the decision and notify Congress. Funds cannot be terminated until 30 days after Congress has been notified of a proposed action.[16]

During a 1979 Department of Justice audit of SBA's Title VI monitoring and enforcement, it was found that they were not adequately monitoring Small Business Investment Companies, development companies and service intensive recipients, such as doctors, dentists, attorneys, etc. for compliance with Title VI.[17] Measures to correct these deficiencies were implemented during 1980; however, at the beginning of FY 1982, monitoring of service-intensive recipients with less than 200 employees had to be eliminated because of the reduction in the number of paperwork burden hours allocated to SBA by OMB. Currently, Small Business Investment Companies and development companies are being monitored via on-site reviews. Other businesses with less than 200 employees are monitored when an employee complaint has been filed, or where reports have been made concerning the employer's poor service or credit practices. These recipients are being monitored via desk audit or on-site reviews. Staff shortages in all offices have adversely affected efficient monitoring activities. However, SBA states that implementation of streamlined procedures and an almost nil employee turnover have combined to result in the continued effectiveness of SBA's OCRC monitoring activities. It is unclear whether in view of past deficiencies and the staff shortages whether there was an effective program in the past that continues to be effective.

[14] Ibid.
[15] Ibid.
[16] Ibid.
[17] Small Business Investment Companies are licensed by SBA and receive large sums from SBA which they in turn lend to small business concerns. Development companies borrow monies from SBA for small business concerns and thereby become the guarantor/recipient of record.

12. Department of Energy

The Department of Energy did not exist when the Commission reviewed the civil rights enforcement efforts of Federal agencies. But already there have been substantial reorganizations of the department's civil rights efforts and downgrading in its level of activity.

During FY 1980 there were regional civil rights officers in each of the Federal regions responsible for both internal and external program activities. During 1981 regional offices were closed and operations formerly administered in Dallas and Kansas City consolidated in Albuquerque. Title VI, EO 11764 and 10 CFR 1040 activities were to become the responsibility of the field office manager. Policy and general guidance for compliance efforts was to be provided by the department's headquarters' Office of Equal Opportunity.[1] The organization charts provided by the department do not show any subdelegation by the office manager of this responsibility.[2] Data were provided on the compliance efforts regarding federally-assisted programs for the entire nation. These show that in 1980 the agency received 13,700 applications but only 1,400 civil rights questionnaires and conducted preliminary inquiries regarding 19 grants. In 1981 the agency received 6,734 applications, 3,000 civil rights questionnaires, conducted post-award reviews of 333 recipients and began preliminary inquiries on 35 grants. During 1981 they also provided 454 training sessions.[3]

Apparently there is some enforcement effort. But the level of that is not evident from the documents submitted, at least so far as work in Region VII is concerned.

[1] U.S. Department of Energy, Memorandum, Aug. 20, 1981.
[2] Charles A. Agnew, Jr., Special Assistant for Civil Rights, letter to staff, Mar. 8, 1983, Enclosure 1.
[3] Ibid., Enclosure 3.

13. Office of Revenue Sharing (ORS), Department of the Treasury

The Office of Revenue Sharing (ORS) is responsible for ensuring nondiscrimination in the employment policies and practices and programs and activities of approximately 39,000 recipients of Federal revenue sharing funds. It does so through a Civil Rights Division located in Washington. In 1980 the agency had 42 full-time permanent civil rights staff and a budget of $1,150,000. It enforces prohibitions against discrimination on the basis of race, color, national origin, or sex contained in Sec. 122(a) of the State and Local Fiscal Assistance Act of 1972, as amended; prohibitions of discrimination on the basis of handicap provided in Sec. 504 of the Rehabilitation Act of 1973; prohibitions against discrimination of the basis of religion provided in the Civil Rights Act of 1964 and the Civil Rights Act of 1968; prohibitions against discrimination in a program and activity on the basis of age as provided in the Age Discrimination Act of 1975. To do so it processes complaints and seeks resolution of them, if the allegations are found upon investigation to be valid and constitute violations of any of the above statutes.[1]

The resources available in 1980 reflected a dramatic increase over those the U.S. Commission on Civil Rights found when it reviewed agency operations in 1974. At that time there were only four full-time civil rights analysts on staff and there was no separate civil rights division.[2] At that time the Commission complained about inadequate civil rights staff, inadequate coordination between ORS and other Federal agencies with similar monitoring duties regarding the same State and local governments, inadequate regulations, inadequate data collection to determine compliance, absence of any requirement that recipients make affirmative efforts to avoid discrimination, to impose goals and timetables as remedies where employment discrimination has been found, inadequate guidelines for auditors to use in determining compliance with the various prohibitions against discrimination.[3]

During 1980 the agency received 256 employment complaints and carried over 880 from the prior fiscal year. It closed 508. It had 438 cases that were unresolved after 180 days. It made 141 investigations in which it found compliance and 288 with findings of noncompliance. It resolved with remedies 178 cases, benefiting 86 persons and 75 persons received a lump sum payment in settlement totaling $430,708. In addition, 107 persons were hired, reinstated, promoted or received pay adjustments. Although it resolved a large number of cases, ORS noted that a number of cases were closed by transfer to another agency or by expedited processing and did not expect that record to be matched in subsequent years. In addition, the agency entered into four lawsuits or administrative proceedings, two of which were ended without settlement. It obtained benefits for 76 persons, totaling $33,105. It monitored 297 orders or settlement agreement and com-

[1] Treadwell O. Phillips, Manager, Civil Rights Division, letter to staff, Apr. 20, 1983, attachment labeled FY 1981.

[2] U.S. Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort—1974, Vol. IV: To Provide Fiscal Assistance* (February 1979), p. 19.

[3] Ibid., pp. 131–135.

pleted reviews on 202. Of these, 175 resulted in findings of compliance, 24 findings of noncompliance were resolved through voluntary settlement, one resulted in the initiation of enforcement proceedings and in two no action was taken.[4] It had 361 complaints alleging discrimination in benefits or services and added 149. It had 373 for more than 180 days. It found compliance in 22 cases, noncompliance in 81. It obtained agreed remedies in 49 and began enforcement proceedings in one. It had two enforcement proceedings during the year.[5] It had 68 agreements in effect, monitored 35, found four instances of noncompliance that were resolved and one in which no action was taken.[6]

During 1981 ORS proposed to increase its efficiency by a variety of measures including development of a standard investigative plan and a determination that findings be issued within 90 days of receipt of the complaint by an investigator.[7]

For 1983, ORS anticipated it would have a budget of $1,199,000, a staff of 40 in its Civil Rights Division and 18.1 workyears of professional staffing. It would process 377 employment complaints retained from 1982 and add 179. It expected to have 252 cases on hand for more than 180 days.[8] It was not sure when age or handicap regulations would be issued. It expected to have 370 orders or settlement agreements in effect and monitor 275. It expected to have 370 complaints in hand alleging discrimination in services or benefits, receive 101 more and have 275 for over 180 days. It expected to have 115 orders or settlement agreements in effect on these bases and monitor 85.[9]

Despite the volume of complaints, it would appear that ORS is still unable to complete all the necessary activities connected to complaints during the year although by extraordinary measures it can reduce its backlog somewhat. In short, as in 1975, regulations remain unissued and enforcement remains problematic, despite an increased budget allocation.

[4] ORS Letter.
[5] Ibid.
[6] Ibid.
[7] Ibid.
[8] Ibid., attachment labeled FY 1982.
[9] Ibid.

14. Federal Executive Board

Federal Executive Boards can be described as the Federal agencies' local chambers of commerce. They are voluntary associations of the Federal agencies. The board members are the chief executive officers of the principal Federal agencies in their cities. For example, the Kansas City FEB executive committee includes representatives of Federal Highway Administration, the Veterans Administration, Army Corps of Engineers, Postal Service, Department of Housing and Urban Development, Small Business Administration, Customs Service, Office of Management and Budget, General Service Administration, Office of Personnel Management, Department of Transportation, Department of Health and Human Services, Marine Corps Finance Center and Federal Aviation Administration. Its logo states it was "created to increase the economy and effectiveness of Federal programs."[1] The boards generally serve to provide services to agencies or for agencies which they collectively want but cannot individually afford.[2]

Several of these boards, not including Kansas City's, were reviewed by the Commission during 1974. It noted that the principal civil rights activities of FEBs were regarding Federal equal opportunity efforts and encouragement of opportunities for minority and female businesses. The former is beyond the purview of this report. The latter was assigned to the FEBs under the provisions of Executive Order 11458 of 1969.[3] The Commission noted that the success of FEB's efforts, through their Minority Business Opportunity Committees, depended on the availability of full-time professional staff, supplied by the U.S. Department of Commerce, Office of Minority Business Enterprises.[4] The Commission noted that those with staff (three of five it reviewed) had been reasonably successful in promoting opportunities.[5]

In 1980 the Kansas City FEB had a staff of two, one professional and one clerical. It also had some support staff from Department of Commerce for its Minority Business Opportunity Committee. The goals of the MBOC were:

—To encourage and assist increased minority business ownership opportunities, management and technical assistance in the Federal Concession Program. (Business Opportunity Development Subcommittee)

—To strengthen and improve government deposits in minority-owned financial institutions and to assist with bonding problems. (Capital Development Subcommittee)

—To promote and assure the involvement and participation of the minority business sector in economic development projects and targeted communities within the area. (Economic Development Subcommittee)

—To evaluate, coordinate, and assist in providing appropriate training to further minority business development enterprise. (Management & Technical Development Subcommittee)

[1] James H. Cuer, Chairman, Greater Kansas City Federal Executive Board, letter to staff, Dec. 6, 1982.
[2] U.S. Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort—1974: Volume VII; To Preserve, Protect and Defend the Constitution* (June 1977), pp. 160–162.
[3] Ibid., p. 178.
[4] Ibid., p. 183.
[5] Ibid.

—To encourage and assist in the expansion of procurement opportunities to minority business and meeting the President's goal for the Federal sector. (Procurement Subcommittee)

—To expand and promote awareness of business assistance programs, etc. by providing information and referral assistance to minority businesses in their specific business problems. (Minority Business Information Center)[6]

The 1980 accomplishment report for minority business covered only a halfyear period, since the committee operated on a fiscal year while FEB was operating on a calendar year. The halfyear report showed that there had been a net increase in contract awards to minorities of 29 percent, the dollar volume was 170 percent of goal and number of contracts was 207 percent of goal. This was attributed primarily to increased utilization of minorities by EPA. Various publications to help minority bidders and help Federal procurement officials to locate them were updated. The Missouri State legislature was urged, without success, to pass a State set aside. (Procurement Subcommittee) The Management and Technical Development Subcommittee noted 67 business management workshops or the like sponsored by Federal agencies, 15 percent of the attendees at which were minority (94 percent of goal). But the major focus of its activity had been to develop a technical assistance directory to assist MBEs in identifying and utilizing the technical and management development programs and resources of local Federal agencies. The Capital Development Subcommittee reported Federal agencies maintained an average daily balance of $576,518 at the only minority bank, Douglass State Bank. GSA was the largest depositor. IRS was to be approached to utilize this facility. The Economic Development Subcommittee urged all four State governors in the region to increase their States' utilization of MBEs. A similar letter was to be sent to local governments. The Committee reported considerable participation by MBEs in UDAG projects. The Minority Business Information Center was closed when VISTA staff were withdrawn and alternate staffing could not be found.[7]

In 1983 minority business became the work of one subcommittee rather than of a full committee of the board. Its objectives were:

1. To coordinate, stimulate and assist in the development and expansion of procurement opportunities for minority business from the government sector.

2. To expand government deposits in minority financial institutions, encourage the delivery of government financial assistance programs to assist minority business development, and stimulate the involvement and participation of the minority business sector in economic development projects.

3. To coordinate, encourage development, and evaluate mangement development and technical assistance program activities and efforts to further minority business enterprise.

4. To identify, review, encourage and assist in the development of increased minority business ownership opportunities within high growth industries, economic development activities, and concession situations.[8]

[6] James H. Cuer, letter to staff, Dec. 6, 1982, attachment.
[7] Greater Kansas City Federal Executive Board, *1980 Annual Report*, pp. 29–40.
[8] Greater Kansas City Federal Executive Board, *Work Plan, FY 1983*, p. 7.

Conclusions

There is a widespread belief that the quality of Federal concern about civil rights has declined markedly since 1980. While the information in this report does suggest that there has been a decline, the degree is open to question. Enforcement was not effective prior to 1980. In some agencies, the quality has deteriorated yet further. In others, the level of effort has remained constant. Clearly the level of compliance efforts is not what it should be. But to suggest that this is the fault of the current administration is excessive.

The resources available for enforcement of the various antidiscrimination laws bear little relationship to the level of activities to be monitored. Most agencies are entirely unable to take even a cursory look at the extent to which recipients of Federal funds are complying with the nondiscrimination laws. Only a few agencies review more than a tiny fraction of their recipients' compliance with the law. Reduced resources, notably at the SBA, in the past two years unquestionably compounded the problem. But since the effort was unsatisfactory to begin with, the current administration deserves only part of the blame. Both before and after 1980, travel funds and the other funding necessary for an effective system of reviewing have been deficient, although these shortages have unquestionably become worse since 1980.

The U.S. Commission on Civil Rights has repeatedly criticized the review procedures of the various Federal agencies with civil rights enforcement responsibilities. It noted that EPA's efforts were constrained and ineffectual. The staffing of the Region VII effort suggests this continues to be the case. At least some regional staff seem to take the position that good relations between the agency and its grantees are more important than enforcement of the laws prohibiting discrimination. It would take approximately 17 years for the Office for Civil Rights of the Department of Education to review its entire universe (assuming it never reviewed the same grantee twice in that time) with its present staffing levels. Yet these have already been cut by about 15 percent since 1980. Although it met its own objectives, the Office of Fair Housing and Equal Opportunity of HUD similarly had insufficient staff to cover its universe and is losing staff. Similarly, reorganization of responsibility for civil rights enforcement in the Department of Labor's Employment Standards and Employment and Training Administrations did not result in the increased allocations of resources necessary to address the Commission's concerns about past failure to adequately enforce the laws. Indeed, it is unclear how the Department of Labor will monitor compliance in the new anti-unemployment programs now being put in place. The Federal Aviation Administration's civil rights efforts is hampered because the unit responsible must deal with both internal and external efforts. Only a relatively small portion of its activity is directed towards external compliance and consequently only a small portion of its universe has been or can be reviewed. The Commission has been particularly critical of the performance of FHWA, noting that the standards for compliance were low and poorly enforced. A review of 1983 proposed

activities of the Region VII FHWA civil rights staff showed that, by the most generous estimate, only about three-quarters of a person year would be devoted to external civil rights efforts by the regional office and even less to compliance. The activities of the divisional offices would add four person years to that. Yet in this region alone, FHWA would be distributing about $600 million. Other Advisory Committee studies showed that the regional civil rights staff was accepting substandard compliance efforts by at least one of the State highway departments under its supervision. SBA's compliance program was, in 1980, found to be inadequate by both the Department of Justice and its own internal audit staff. Yet proposed changes to remedy deficiencies were abandoned less than a year after being implemented with the result that SBA was monitoring less than one-half of one percent of its universe. Staff cutbacks and travel restrictions would further hamper these already limited efforts. As in 1974, Office of Revenue Sharing lacks resources and regulations needed to address the range of civil rights complaints it receives. In 1974 the Commission had found Federal Executive Boards' efforts to ensure equal opportunity deficient. In 1980 the Kansas City board still had limited numeric objectives for increased utilization of minority or women-owned businesses, the only area in which the Board had a substantial role. As of April 1983, it had just framed its objectives for a program year that had begun three months earlier. Only the bank regulatory agencies have the semblance of an effective antidiscrimination mechanism, and even these are not without defects, albeit at a much less significant level than those of other agencies.

Nine years after the U.S. Commission on Civil Rights full-scale review of Federal enforcement efforts, the Advisory Committees in Region VII see continued limited enforcement of Federal laws and regulations prohibiting discrimination. The reasons for this are unchanged. Nine years of findings of deficiencies and suggestions both by the Commission and by these Advisory Committees for improved enforcement procedures have apparently had little effect. The Advisory Committee urges some initiatives by the Commission. In addition the Advisory Committees intend to continue to monitor the various Federal agencies' activities in their region and continue to bring to the attention of the Commission and the public the failure of the Federal Government to enforce the law of the land. As things now stand, the promise of the laws prohibiting discrimination are a cruel joke on minorities, women, the handicapped, the elderly and other traditional victims of prejudice. Set against the size of the current Federal domestic program expenditures, remedy is not expensive. But the will to enforce the law is apparently lacking.

Findings and Recommendations

The following findings and recommendations are submitted under the provisions of Sec. 703.2(e) of the Commission's regulations, empowering Advisory Committees to initiate and forward advice and recommendations to the Commission upon matters which the State Committees have studied.

The Iowa, Kansas, Missouri and Nebraska Advisory Committees present the findings and recommendations for consideration by the Commission in its national program planning and for its consideration in advising the President and Congress on matters within its jursidiction.

Finding 1: The Advisory Committees find that enforcement of the various Federal prohibitions against discrimination by the agencies reviewed in this report is generally unsatisfactory. There are large gaps between the universe subject to the Federal laws and regulations and the population actually reviewed by the various agencies. There are substantially fewer resources available than would be required to allow comprehensive review of the universe in a reasonable period of time. In some cases the levels of compliance sought are less than might be possible because of national policy directives to regional staffs or local staff decisions.

Recommendation 1: The Advisory Committees urge the Commission to undertake a comprehensive review of regional civil rights compliance efforts to determine whether these patterns also characterize other region's efforts.

Finding 2: The Advisory Committees note that EPA's civil rights efforts are as invisible now as they were in 1974 when last studied by the Commission. There is no effective effort at the regional level, nor given the resources assigned to civil rights at present could there be one even with adequate national guidance and delegated authority. Indeed, enforcement efforts at the regional level in 1983 will be weaker than it was in 1980 because of regulatory changes.

Recommendation 2: The Advisory Committees urge the Commission to suggest that the Administrator of EPA strengthen both the regulatory powers given to the regional offices to enforce civil rights protections and the staff available to enforce the civil rights laws.

Finding 3: The Advisory Committees note that the Commission has identified significant weaknesses in the enforcement of nondiscrimination in education by what is now the Office for Civil Rights of the U.S. Department of Education. They note that the staffing of the regional office has been substantially reduced since 1980. Further, they note that the existing staff is unable to review a reasonable fraction of the universe of educational institutions subject to their jurisdiction–it would take at least 17 years by the most optimistic estimate for such reviews to be conducted.

Recommendation 3: The Advisory Committees urge the Commission to suggest that the Secretary of Education substantially increase the staffing and resources provided to the Office for Civil Rights at the regional level so that regional units can review the institutions subject to their jurisdiction comprehensively and in a timely fashion.

Finding 4: The Advisory Committees note that the Commission found significant deficiencies in the civil rights enforcement efforts of the predecessor agency to the Office for Civil Rights of the Department of Health and Human Services. The Advisory Committees note that the staffing for the regional office has declined significantly from its 1980 level. By the most optimistic calculation, it would take 14 years for the regional office to review its known universe (which is only a fraction of all grantees and subgrantees).

Recommendation 4: The Advisory Committees urge the Commission to suggest that the Secretary of Health and Human Services substantially increase the staffing and resources provided to the Office for Civil Rights at the regional level so that regional units can review the institutions subject to their jurisdiction comprehensively and in a timely fashion.

Finding 5: The Advisory Committees note that the Commission has found significant deficiencies in the civil rights enforcement efforts of the Department of Housing and Urban Development. In 1983 the resources available to the regional office had declined somewhat from earlier levels. In fact, our colleagues on the Missouri Advisory Committee had criticized the effort being made even with full staffing. But it should be noted that the regional office generally has met or exceeded the goals set for its efforts by its own national headquarters.

Recommendation 5: The Advisory Committees urge the Commission to continue to review the Federal fair housing enforcement effort.

Finding 6: The Advisory Committees note that the Commission found significant deficiencies in the civil rights enforcement efforts of the U.S. Department of Labor. The Advisory Committees note a significant reduction in the staffing and resources available for civil rights enforcement in the regional office and that only a small proportion of the universe subject to review is being reviewed.

Recommendation 6: The Advisory Committees urge the Commission to suggest that the Secretary of Labor increase the staffing and resources provided to the Office for Civil Rights at the regional level and that he instruct regional offices to monitor a larger proportion of the State and local agencies subject to their review.

Finding 7: The Advisory Committees note that the Federal Aviation Administration civil rights enforcement efforts in Region VII is probably understaffed given the range of activities and number of facilities subject to its jurisdiction.

Recommendation 7: The Advisory Committees urge the Commission suggest that the Administrator of the Federal Aviation Administration increase the resources devoted to civil rights compliance in the regional offices so that they can review their entire universe in a timely fashion.

Finding 8: The Advisory Committees note that the Commission has frequently criticized the enforcement efforts of the Federal Highway Administration. The Committees note that regional staff resources are slight compared to the budget authorization but these are supplemented by division staff in each of the States. Our colleagues in the Missouri Advisory Committee have already reported the significant deficiencies in the enforcement efforts of at least one State agency subject to regional and divisional review. The Committees expect significant changes may result from the regulations issued pursuant to the Surface Transportation Act.

Recommendation 8: The Advisory Committees urge the Commission to closely monitor the efforts of the Federal Highway Administration to implement the new regulations requiring minority and female contractor participation in Federal highway construction. The Committees urge the Commission to suggest that the Administrator of the Federal Highway Administration increase the resources available for civil rights compliance efforts and ensure that existing regulations are enforced.

Finding 9: The Advisory Committees note that the Commission and other Federal agencies have found significant deficiencies in the civil rights enforcement efforts of the Small Business Administration. As a consequence of recent OMB decisions, corrective measures have been curtailed. It would appear impossible for SBA to have any idea about the compliance of its beneficiaries with the various Federal antidiscrimination requirements. Moreover, staffing for enforcement efforts has been reduced.

Recommendation 9: The Advisory Committees urge the Commission to suggest that the Administrator of the Small Business Administration increase the staffing available so that it is possible to provide comprehensive reviews of the portion of its beneficiaries SBA is still allowed to review. The Administration should also be encouraged to protest OMB's restrictions on the data available to determine civil rights compliance.

Finding 10: The Advisory Committees note the failure of several Federal agencies to cooperate in this study: Departments of Agriculture, Commerce and Interior, Office of Personnel Management and Office of Federal Contract Compliance Programs.

Recommendation 10: The Advisory Committees urge that the compliance efforts of these agencies be the subject of future Commission studies as soon as practicable.